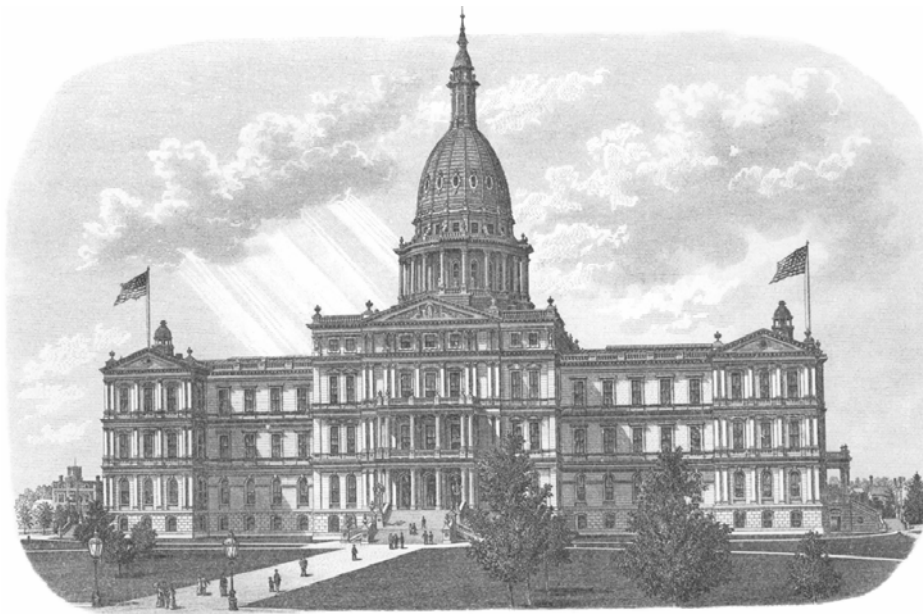


Michigan Register

Issue No. 4— 2008 (Published March 15, 2008)



GRAPHIC IMAGES IN THE MICHIGAN REGISTER

COVER DRAWING

Michigan State Capitol:

This image, with flags flying to indicate that both chambers of the legislature are in session, may have originated as an etching based on a drawing or a photograph. The artist is unknown. The drawing predates the placement of the statue of Austin T. Blair on the capitol grounds in 1898.

(Michigan State Archives)

PAGE GRAPHICS

Capitol Dome:

The architectural rendering of the Michigan State Capitol's dome is the work of Elijah E. Myers, the building's renowned architect. Myers inked the rendering on linen in late 1871 or early 1872. Myers' fine draftsmanship, the hallmark of his work, is clearly evident.

Because of their size, few architectural renderings of the 19th century have survived. Michigan is fortunate that many of Myers' designs for the Capitol were found in the building's attic in the 1950's. As part of the state's 1987 sesquicentennial celebration, they were conserved and deposited in the Michigan State Archives.

(Michigan State Archives)

East Elevation of the Michigan State Capitol:

When Myers' drawings were discovered in the 1950's, this view of the Capitol – the one most familiar to Michigan citizens – was missing. During the building's recent restoration (1989-1992), this drawing was commissioned to recreate the architect's original rendering of the east (front) elevation.

(Michigan Capitol Committee)

Michigan Register

Published pursuant to § 24.208 of
The Michigan Compiled Laws



Issue No. 4— 2008

(This issue, published March 15, 2008, contains
documents filed from February 15, 2008 to March 1, 2008)

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Peter Plummer, Executive Director, State Office of Administrative Hearings and Rules; **Deidre O'Berry**, Administrative Rules Analyst for Operations and Publications.

Jennifer M. Granholm, Governor



John D. Cherry Jr., Lieutenant Governor

PREFACE

PUBLICATION AND CONTENTS OF THE MICHIGAN REGISTER

The State Office of Administrative Hearings and Rules publishes the *Michigan Register*.

While several statutory provisions address the publication and contents of the *Michigan Register*, two are of particular importance.

MCL 24.208 states:

Sec. 8 (1) The State Office of Administrative Hearings and Rules shall publish the Michigan register at least once each month. The Michigan register shall contain all of the following:

- (a) Executive orders and executive reorganization orders.
 - (b) On a cumulative basis, the numbers and subject matter of the enrolled senate and house bills signed into law by the governor during the calendar year and the corresponding public act numbers.
 - (c) On a cumulative basis, the numbers and subject matter of the enrolled senate and house bills vetoed by the governor during the calendar year.
 - (d) Proposed administrative rules.
 - (e) Notices of public hearings on proposed administrative rules.
 - (f) Administrative rules filed with the secretary of state.
 - (g) Emergency rules filed with the secretary of state.
 - (h) Notice of proposed and adopted agency guidelines.
 - (i) Other official information considered necessary or appropriate by the State Office of Administrative Hearings and Rules.
 - (j) Attorney general opinions.
 - (k) All of the items listed in section 7(1) after final approval by the certificate of need commission or the statewide health coordinating council under section 22215 or 22217 of the public health code, 1978 PA 368, MCL 333.22215 and 333.22217.
- (2) The State Office of Administrative Hearings and Rules shall publish a cumulative index for the Michigan register.
 - (3) The Michigan register shall be available for public subscription at a fee reasonably calculated to cover publication and distribution costs.
 - (4) If publication of an agency's proposed rule or guideline or an item described in subsection (1)(k) would be unreasonably expensive or lengthy, the State Office of Administrative Hearings and Rules may publish a brief synopsis of the proposed rule or guideline or item described in subsection (1)(k), including information on how to obtain a complete copy of the proposed rule or guideline or item described in subsection (1)(k) from the agency at no cost.
 - (5) An agency shall transmit a copy of the proposed rules and notice of public hearing to the State Office of Administrative Hearings and Rules for publication in the Michigan register.

MCL 4.1203 states:

Sec. 203. (1) The Michigan register fund is created in the state treasury and shall be administered by the State Office of Administrative Hearings and Rules. The fund shall be expended only as provided in this section.

- (2) The money received from the sale of the Michigan register, along with those amounts paid by state agencies pursuant to section 57 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.257, shall be deposited with the state treasurer and credited to the Michigan register fund.
- (3) The Michigan register fund shall be used to pay the costs preparing, printing, and distributing the Michigan register.
- (4) The department of management and budget shall sell copies of Michigan register at a price determined by the State Office of Administrative Hearings and Rules not to exceed cost of preparation, printing, and distribution.
- (5) Notwithstanding section 204, beginning January 1, 2001, the State Office of Administrative Hearings and Rules shall make the text of the Michigan register available to the public on the internet.
- (6) The information described in subsection (5) that is maintained by the State Office of Administrative Hearings and Rules shall be made available in the shortest feasible time after the information is available. The information described in subsection (5) that is not maintained by the State Office of Administrative Hearings and Rules shall be made available in the shortest feasible time after it is made available to the State Office of Administrative Hearings and Rules.
- (7) Subsection (5) does not alter or relinquish any copyright or other proprietary interest or entitlement of this state relating to any of the information made available under subsection (5).
- (8) The State Office of Administrative Hearings and Rules shall not charge a fee for providing the Michigan register on the internet as provided in subsection (5).
- (9) As used in this section, "Michigan register" means that term as defined in section 5 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.205.

CITATION TO THE MICHIGAN REGISTER

The *Michigan Register* is cited by year and issue number. For example, 2001 MR 1 refers to the year of issue (2001) and the issue number (1).

CLOSING DATES AND PUBLICATION SCHEDULE

The deadlines for submitting documents to the State Office of Administrative Hearings and Rules for publication in the *Michigan Register* are the first and fifteenth days of each calendar month, unless the submission day falls on a Saturday, Sunday, or legal holiday, in which event the deadline is extended to include the next day which is not a Saturday, Sunday, or legal holiday. Documents filed or received after 5:00 p.m. on the closing date of a filing period will appear in the succeeding issue of the *Michigan Register*.

The State Office of Administrative Hearings and Rules is not responsible for the editing and proofreading of documents submitted for publication.

Documents submitted for publication should be delivered or mailed in an electronic format to the following address: MICHIGAN REGISTER, State Office of Administrative Hearings and Rules, Ottawa Building - Second Floor, 611 W. Ottawa, P.O. Box 30695, Lansing, MI 48933.

RELATIONSHIP TO THE MICHIGAN ADMINISTRATIVE CODE

The *Michigan Administrative Code* (1979 edition), which contains all permanent administrative rules in effect as of December 1979, was, during the period 1980-83, updated each calendar quarter with the publication of a paperback supplement. An annual supplement contained those permanent rules, which had appeared in the 4 quarterly supplements covering that year.

Quarterly supplements to the Code were discontinued in January 1984, and replaced by the monthly publication of permanent rules and emergency rules in the *Michigan Register*. Annual supplements have included the full text of those permanent rules that appear in the twelve monthly issues of the *Register* during a given calendar year. Emergency rules published in an issue of the *Register* are noted in the annual supplement to the Code.

SUBSCRIPTIONS AND DISTRIBUTION

The *Michigan Register*, a publication of the State of Michigan, is available for public subscription at a cost of \$400.00 per year. Submit subscription requests to: State Office of Administrative Hearings and Rules, Ottawa Building - Second Floor, 611 W. Ottawa, P.O. Box 30695, Lansing, MI 48933. Checks Payable: State of Michigan. Any questions should be directed to the State Office of Administrative Hearings and Rules (517) 335-2484.

INTERNET ACCESS

The *Michigan Register* can be viewed free of charge on the Internet web site of the State Office of Administrative Hearings and Rules: www.michigan.gov/cis/0,1607,7-154-10576_35738---,00.html

Issue 2000-3 and all subsequent editions of the *Michigan Register* can be viewed on the State Office of Administrative Hearings and Rules Internet web site. The electronic version of the *Register* can be navigated using the blue highlighted links found in the Contents section. Clicking on a highlighted title will take the reader to related text, clicking on a highlighted header above the text will return the reader to the Contents section.

Peter Plummer, Executive Director
State Office of Administrative Hearings and Rules

2008 PUBLICATION SCHEDULE

Issue No.	Closing Date for Filing or Submission Of Documents (5 p.m.)	Publication Date
1	January 15, 2008	February 1, 2008
2	February 1, 2008	February 15, 2008
3	February 15, 2008	March 1, 2008
4	March 1, 2008	March 15, 2008
5	March 15, 2008	April 1, 2008
6	April 1, 2008	April 15, 2008
7	April 15, 2008	May 1, 2008
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FILED WITH THE SECRETARY OF STATE

MCL 24.208 states in part:

“Sec. 8. (1) The State Office of Administrative Hearings and Rules shall publish the Michigan register at least once each month. The Michigan register shall contain all of the following:

* * *

(f) Administrative rules filed with the secretary of state.”

ADMINISTRATIVE RULES

SOAHR 2006-078

DEPARTMENT OF AGRICULTURE

PESTICIDE AND PLANT PEST MANAGEMENT DIVISION

REGULATION NO. 637. PESTICIDE USE

Filed with the Secretary of State on February 21, 2008

These rules become effective immediately upon filing with the Secretary of State unless adopted under sections 33, 44, or 45a(6) of 1969 PA 306. Rules adopted under these sections become effective 7 days after filing with the Secretary of State.

(By authority conferred on the director of the department of agriculture by section 8325 of 1994, PA 451, MCL 324.8325)

R 285.637.1, R 285.637.2, R 285.637.3, R 285.637.4, R 285.637.5, R 285.637.6, R 285.637.7, R 285.637.8, R 285.637.9, R 285.637.10, R 285.637.11, R 285.637.12, R 285.637.13, R 285.637.14, R 285.637.15 and R 285.637.17 of the Michigan Administrative Code are amended.

R 285.637.1 Definitions; A to O.

Rule 1. As used in these rules:

- (a) "Act" means 1994 PA 451, MCL 324.8301.
- (b) "Broadcast" means any application of pesticides over an area, such as a lawn, field, room, crawl space, or other such surface. The term does not include crack and crevice or spot applications made to selected plants, insects, soil, or other surfaces.
- (c) "Building manager" means the person who is responsible for the building's pest management program and to whom any reporting and notification shall be made pursuant to these rules.
- (d) "Commercial building" means any building or portion thereof which is not a private residence where a business is located and which is frequented by the public.
- (e) "Community pesticide application" means an application of pesticides to multiple properties for which the commercial applicator does not have a service agreement with each individual property owner or resident, such as local mosquito control and gypsy moth spray programs. Apartments, town houses or condominiums are considered a single property under this definition.
- (f) "Crack and crevice" means the application of insecticide into openings commonly found at expansion joints, between different elements of construction, and between equipment and floors.
- (g) "Dry break" means a 1 or 2-piece 'in-line' aperture or area used for accepting or drawing liquid, which is separate from the active circulating system, and not subject to positive or negative pressure during the application process. This aperture may include a spring operated plunger device to prevent leakage in the event of shutoff valve failure.
- (h) "Emergency situation" means an occurrence which is not reasonably foreseeable and which requires attention and action before the time required for notice pursuant to MCL 324.8316(3) in order to protect or enhance the health or safety of those reasonably believed to be involved with, or exposed to, the occurrence.

(i) "FIFRA" means the federal insecticide, fungicide, and rodenticide act of 1947, as amended, 7 U.S.C. §136 et seq.

(j) "Health care facility" means a facility which is not a private home and at which people may stay 1 or more nights and receive medical care, such as a hospital or nursing home.

(k) "Mixing and loading facility" means a site for commercial applicators that has the following meanings:

(i) For commercial aerial applicators, the term means the primary location in Michigan at which pesticides are repackaged, loaded, mixed, or transferred from 1 container to another.

(ii) For all other commercial applicators, the term means a location or site where pesticides are transferred from one container to another, repackaged, or mixed in dry or liquid form for over 10 days in any calendar year, but does not mean a pesticide-producing establishment as defined by FIFRA, unless the establishment also transfers, repackages, or mixes dry or liquid pesticides. Transfer between containers includes transfers to pesticide application equipment and nurse tanks. Any mixing or loading site that is owned or operated within a 1/2-mile radius of another site that is owned or operated by the same person will be considered as the same facility or site.

(l) "Multiple-use areas" means developed outdoor public recreation areas, such as, but not limited to, campgrounds, rest areas, parks, playgrounds, picnic areas, and athletic fields. The term does not include undeveloped forested areas.

(m) "Nonpowered equipment" means pesticide application equipment that pumps or disperses pesticides without utilizing a motorized power source. Examples include manual pumps, aerosols, or other non-motorized self-contained or operated spray equipment.

(n) "Off-target direct discharge" means the direct application of pesticides onto a property that is beyond the boundaries of the intended treatment area.

(o) "Off-target drift" means the physical movement of a pesticide at the time of application from the targeted site of application to any nontarget site. Off-target drift shall not include the off-target movement of a pesticide by means of erosion, volatilization, or windblown soil particles after the application of a pesticide.

(p) "Organic farm" means a location or site that is registered under MCL 286.911(4).

R 285.637.2 Definitions; P to W.

Rule 2. As used in these rules:

(a) "Pesticide-containing material" means any of the following:

(i) Any container of a pesticide product that has not been triple rinsed or the equivalent thereof.

(ii) Any rinsate that is derived from a pesticide container, pesticide application equipment, or equipment washing.

(iii) Any material that is used to collect or contain excess or spilled pesticide or rinsate.

(iv) Any mixture of pesticide and diluent.

(v) Material that is generated as a result of contact with or utilization of a pesticide in an application, containment, recovery, reuse, or treatment system. The term does not include personal protective equipment that contains pesticide residue.

(b) "Pesticide-producing establishment" means any site where a pesticide is manufactured, packaged, repackaged, prepared, processed, or held for distribution or sale.

(c) "Properties adjacent to" means properties which share a common boundary line or corner with the property to be treated or which are directly across an undivided road, stream, or right-of-way from the property to be treated.

(d) "Public building" means a building that is owned or operated by a federal, state, or local government, including public universities.

(e) "Registry" means a list of persons who must be notified before a pesticide is applied, as described in R 285.637.5.

(f) "Rinsate" means any material that may result from the rinsing of interior surfaces of pesticide containers, pesticide application equipment, or containment areas that has or may have pesticide residues.

(g) "School" means public and private schools, grades kindergarten through the twelfth grade.

(h) "Sensitive area" means any of the following:

(i) Occupied school buildings, together with any land that is part of the same property and is within 100 feet of such buildings, and including any playgrounds, athletic fields, or other such facilities which are in use at the time of the pesticide application.

(ii) Developed recreation areas that are in use and open to the public, including any of the following:

(A) Developed public or commercial campgrounds.

(B) Developed picnic areas.

(C) Marked roadside rest areas.

(D) Marked publicly owned or maintained hiking trails.

(E) Developed park and recreation facilities.

(F) Playgrounds.

(G) Other areas that are developed for organized sports or recreation.

(iii) Apiary locations.

(iv) Water bodies, including plotted streams, brooks, rivers, ponds, and lakes, if any such water body contains water at the time of the pesticide application.

(v) Organic farms as defined in R 285.637.1(p).

(vi) Health care facilities.

(vii) Commercial preschool and day-care centers that are located in buildings which are in use and identified by signs or other means and which are recognizable to the public.

(viii) Posted school bus stops which are identified by signs and which are recognizable to the public.

(i) "Space" means the application of a pesticide that is intended to discharge a pesticide into the air throughout an entire volumetric area.

(j) "Spill kit" means a portable kit or other equipment that is designed to recover, minimize, contain, or absorb spills, leaks, releases, or other discharges of pesticides.

(k) "Spot treatment" means a pesticide application to a portion of a definable area, such as floors, walls, ceilings, bases or undersides of equipment, turf, or ground. A "spot" shall not be more than 2 square feet, and the total area treated shall not exceed 20% of the definable area.

(l) "Use of a pesticide in a manner inconsistent with its label" means to use any pesticide in a manner that is not consistent with the labeling, except that the term does not apply to any of the following:

(i) Applying a pesticide at any dosage, concentration, or frequency that is less than that specified on the labeling, unless the labeling specifically prohibits deviation from the specified dosage, concentration, or frequency.

(ii) Applying a pesticide against any target pest that is not specified on the labeling if the application is to the crop, animal, or site that is specified on the labeling.

(iii) Employing any method of application that is not prohibited by the labeling unless the labeling specifically states that the product may be applied only by the methods specified on the labeling.

(iv) Mixing a pesticide or pesticides with a fertilizer when such mixture is not prohibited by the labeling.

(v) Any use of a pesticide that is in compliance with the provisions of section 5, 18, or 24 of FIFRA.

(m) "Washing or rinsing facility" means a site for commercial applicators where pesticides and pesticide-containing materials are cleaned, washed, or rinsed from containers or from pesticide application, handling, storage, or transportation equipment for more than 10 days in any calendar year.

(n) "Wash water" means water that is used to wash exterior surfaces of application, handling, storage, or transportation equipment where pesticide residues are likely to occur.

R 285.637.3 Terms defined in act.

Rule 3. Terms defined in the act have the same meanings when used in these rules.

R 285.637.4 Standards for pesticide use.

Rule 4. A pesticide application shall be made in compliance with all of the following provisions:

- (a) A pesticide shall be used in a manner that is consistent with its label.
- (b) Pesticide applications shall be made in a manner that prevents off-target direct discharges of pesticides.
- (c) Pesticide application equipment shall be in sound mechanical condition and shall be free of leaks and other defects or malfunctions that might cause a pesticide to be deposited off-target or in a manner that is inconsistent with its label.
- (d) Pesticide application equipment shall be properly calibrated.
- (e) Pesticide application equipment shall have properly functioning shutoff valves or other mechanisms that enable the operator to prevent off-target discharge.
- (f) Pesticide application or loading equipment that is designed to draw water shall have a properly functioning anti-siphoning device.
- (g) At sites where pesticides are mixed, loaded, or transferred, an applicator shall maintain and utilize equipment in a manner that prevents the incidental release of pesticides to the environment.
- (h) All commercial aerial applicators shall maintain pesticide application equipment in compliance with all of the following performance standards:
 - (i) Dry breaks shall be used to connect loading hoses to aircraft.
 - (ii) All hoses shall either be double clamped or the equivalent.
 - (iii) Mesh screens on loading hoses shall be at least 20 mesh or finer unless otherwise specified by the pesticide manufacturer or the product label.
 - (iv) Shutoff valves shall be in place at the discharge side of the loading pump and on each side of dry breaks.
 - (v) The loading system shall be flushed with clean water at the completion of each individual load, except when using undiluted material.
 - (vi) Equipment such as gaskets on quick-disconnect coupling, nozzle check valve diaphragms, and o-rings shall be replaced annually.
 - (vii) An aircraft that has a circulating pump system shall have an operating 3-way spray valve that, when in the off position, creates a negative pressure on the outlet or boom side.
- (i) Applications shall not occur when weather conditions favor the off-target drift of pesticides or prevent the proper deposition of pesticides to the target area.
- (j) Before applying a pesticide, the applicator shall identify any sensitive areas that are located on properties adjacent to the target area and shall use appropriate precautionary measures to prevent the direct discharge or drift of pesticides to those areas.
- (k) Pesticides shall be applied in a manner that minimizes the exposure of nontarget humans, livestock, domestic animals, and wildlife to the pesticides. Unless permitted by the label, an applicator shall take all reasonable precautions that will prevent a pesticide from being applied if unprotected persons are present within the application site or are present in adjacent areas when off-target drift may occur.

(l) A commercial applicator that is required to be licensed under the act, other than an aerial applicator, shall provide the following information, which shall be printed or affixed on the exterior of each vehicle that is used to transport a pesticide:

- (i) The name of the licensed applicator firm.
- (ii) The business telephone number, address, or United States department of transportation census number of the licensed applicator firm.
- (iii) The printed information must be legible and visible.
- (iv) The required information shall be in a typeface 3 inches high or larger.
- (v) The director may grant an exemption from the requirements of paragraphs (i) and (ii) of this subdivision upon petition by a licensed applicator firm.
- (m) Any person who mixes, loads, or otherwise uses pesticides shall have immediate access to a spill kit. Aerial applicator spill kits shall contain not less than 2 buckets, absorptive pillows, or another system for containing leaking nozzles. The spill kit requirement does not apply to a person who uses single containers of use dilution pesticides in a quantity that is less than 16 ounces.

R 285.637.5 Registry of persons requiring notification before turf and ornamental application of pesticides.

Rule 5. (1) The department shall maintain a voluntary registry of persons who, due to a verifiable medically documented condition, require notification before the application of pesticides on a property that is adjacent to their primary residences. Upon request, the department shall annually register a person who requires notification before the use of pesticides. Each year, the person shall submit a valid certificate from a physician who is licensed to practice medicine. The certificate shall be on forms provided by the department and shall indicate the following information:

- (a) The current diagnosed condition or ailment of the person that specifies the need for notification.
- (b) Any recommended additional distance notification deemed necessary and substantiated by the physician. The physician's information shall include the recommended additional distance in feet.
- (2) The certificate that is provided to the department pursuant to the provisions of subrule (1) of this rule shall be subject to review and approval by the department.
- (3) Registration shall also include all of the following information on forms provided by the department:
 - (a) Name, address, other than a post office box number, and telephone number of a person who requires notification.
 - (b) Name, address, other than a post office box number, and telephone number of a designated contact person.
 - (c) A list of addresses of properties that are adjacent to the primary residence of the person requiring notification. Information shall be provided as follows:
 - (i) Street address and occupant name, or designation as vacant lot, direction (N, S, E, W), and estimated street address from notification person's address.
 - (ii) Designation of multiple dwelling units such as apartments or condominiums, if applicable.
 - (iii) Designation as multiple use area or commercial property, if applicable.
 - (d) A list of names and addresses of additional property owners as provided for in subrule (1)(b) of this rule. Information shall be provided as follows:
 - (i) Street address and occupant name, or designation as vacant lot, direction (N, S, E, W), and estimated street address from notification person's address.
 - (ii) Designation of multiple dwelling units such as apartments or condominiums, if applicable.
 - (iii) Designation as multiple use area or commercial property, is applicable.
- (4) The printed registry list shall remain confidential, to the extent permitted by law, except for the following information:

- (a) Name, address, and telephone number of the designated contact person.
- (b) Addresses of the adjacent properties or other properties as identified in subrule (1) (c) and (1) (d) of this rule.
- (c) The address of a person who requires notification.
- (5) The individual requiring prior notification, or his or her designated contact person, shall obtain a copy of the annual list and ensure that the specific information provided to the department is accurate and a component of the list.
- (6) Initial applications may be submitted to the department at any time. Renewal registration forms supplied by the department shall be submitted annually on or before February 1. An applicant shall immediately notify the department of any address or contact person information change.
- (7) The department shall annually publish a list, by March 15, of nonconfidential information provided by persons who request notification. Listings shall be provided to all of the following entities:
 - (a) Commercial pesticide applicator firms that are licensed in categories which will require the firms to notify persons on the registry.
 - (b) County public health departments.
 - (c) Upon request, commercial applicators who are certified in a category that will require the applicators to notify persons on the registry.
- (8) Before a lawn or ornamental pesticide other than a general-use ready-to-use pesticide is applied on a property address listed on the most recent published registry, a commercial applicator shall notify the contact person on the registry. Notification shall take place before the application in accordance with all of the following provisions:
 - (a) By telephone the previous business day before a pesticide application or by written notification that is delivered in person to the residence of the listed contact person. Written notification shall include all information that is listed in subdivision (b) of this subrule and shall be left at the main entrance to the residence not less than 24 hours before application.
 - (b) Notification shall include all of the following information:
 - (i) Name, address, and telephone number of the commercial applicator or firm that makes the application.
 - (ii) Anticipated date and approximate time of the application.
 - (iii) Location of the application.
 - (iv) Name of the pesticide active ingredient or ingredients being applied.
 - (c) If the initial application date is postponed, new notification shall be issued before the next application as required by subdivision (a) of this subrule.
 - (d) The licensee's responsibility to notify a person who requires notification shall be considered discharged if any 1 of the following provisions is complied with:
 - (i) Telephone notification is attempted on the business day before application and, if unsuccessful, the applicator has left written notification at the person's residence at the time of application.
 - (ii) Written notification is delivered in person not less than 24 hours before application.
 - (iii) The applicator obtains written authorization from the contact person for alternate methods of notification.
 - (e) The registry shall be subject to annual review by the department.
 - (f) This rule shall not apply to applications of pesticides that are made through a closed injection system.

R 285.637.6 Mixing and loading facilities.

Rule 6. (1) Pesticide mixing or loading shall not occur at a mixing and loading facility unless the mixing or loading is in compliance with the provisions of this subrule. Mixing and loading shall only occur on a pad that is in compliance with all of the following requirements:

(a) The pad shall be constructed with impervious materials, such as sealed concrete, plastic, stainless steel, fiberglass or other approved materials.

(b) The pad shall be bermed, curbed, sloped, or otherwise designed to contain spills, leaks, releases, or other discharges that are generated during the mixing and loading of pesticides or pesticide-containing materials.

(c) Pesticides or pesticide-containing materials that are collected by the pad shall be contained either by the pad itself or drained, pumped, or transferred to an additional impermeable, aboveground holding tank or reservoir until utilized or disposed of in compliance with applicable local, state, and federal laws. The holding tank or reservoir shall be suitably constructed to prevent the release of pesticides or pesticide-containing materials to the environment.

(d) The pad or holding tank or reservoir shall be able to contain the amount of pesticide that could be discharged during 1 minute of mixing or loading.

(e) Mixing or loading pads which are located outdoors and which are not covered shall also meet either of the following criteria:

(i) Have the capacity to contain a 6-inch rainfall.

(ii) Be cleaned of all pesticide residues immediately after spills to prevent contaminants from entering rainwater runoff.

(f) Any portable pad or retractable pad that is stored in a manner to prevent the interception and subsequent runoff of pesticide-containing material shall not be subject to the provisions of subdivision (e) of this subrule.

(g) The mixing or loading of pesticides shall not occur unless a primary shutoff mechanism is immediately accessible. In addition, an emergency shutoff mechanism shall be located upstream from the primary shutoff mechanism and shall be positioned to be fully operated within 30 seconds.

(h) The requirements of this rule shall not apply to hand-held equipment.

(2) A pesticide-producing establishment that is in compliance with the provisions of R 285.640.10 pertaining to operational area containment is exempt from the provisions of this rule.

(3) An agricultural mixing or loading facility that maintains a mixing and loading pad in accordance with the provisions of this rule is exempt from maintaining a second mixing and loading pad at a location where pesticides are mixed with anhydrous ammonia for a period of not more than 60 days in any calendar year.

R 285.637.7 Washing and rinsing facilities.

Rule 7. The washing or rinsing of pesticide residues from application equipment, mixing equipment, or other items that are used for the storage, handling, or use of a pesticide shall not be performed at a washing or rinsing facility other than in a designated wash or rinse containment area as required by this rule. Washing and rinsing in a wash and rinse water containment area shall be in compliance with all of the following provisions:

(a) Washing and rinsing shall occur on a pad that is constructed of impervious materials, such as sealed concrete, plastic, stainless steel, fiberglass, or other approved material.

(b) The pad shall be designed to contain pesticides and pesticide-containing materials that are generated during washing and rinsing and prevent the release of such material to the environment.

(c) Washing and rinsing may occur at a mixing and loading facility.

(d) The requirements of this rule shall not apply to any of the following:

(i) Situations that constitute an emergency where washing or rinsing pesticide residues from equipment or other items is necessary to prevent imminent harm to human health or the environment.

(ii) Aircraft used by aerial applicators.

(iii) Hand-held equipment.

(iv) Any other equipment that is excluded by the director after a review of supporting documentation.

(v) Pesticide containers being prepared for disposal consistent with their label directions or R 285.637.8.

R 285.637.8 Management of excess pesticides and pesticide-containing materials.

Rule 8. (1) Persons who have pesticide-containing materials that consist of pesticides for which federal or state registration has not been suspended may, except as provided in subrules (3) and (4) of this rule, use these materials as a pesticide in accordance with the instructions for use on the label of the pesticide or pesticides they contain. Both of the following uses of pesticides or pesticide-containing material are considered to be uses in accordance with label directions:

(a) The application of a pesticide or pesticide-containing material to a labeled site so that the total application rate of the active ingredient does not exceed directions for use provided on the label.

(b) Pesticide-containing materials that are used as diluents in subsequent mixtures of pesticides and diluents if the subsequent applications of such mixtures are in compliance with the provisions of subdivision (a) of this subrule.

(2) Soils, sediments, debris, or other pesticide-containing material may be used as a pesticide under the provisions of these rules if the person who manages the material knows the amount of active ingredient in the material or can estimate the largest possible amount of active ingredient in the material being managed either because of having direct knowledge of the amount of pesticide that is contained in the material or as a result of testing the material. Application of material for which the amount of active ingredient is unknown or cannot be estimated is prohibited.

(3) A person who has quantities of pesticide-containing materials and who does not intend to use these materials as pesticides in compliance with the provisions of subrule (1) of this rule shall follow the instructions for product and container disposal on the label of the pesticide. A person who recycles, recovers, or otherwise handles pesticide-containing materials in compliance with applicable local, state, and federal solid waste laws shall be considered to be in compliance with the label directions for disposal, even if a method of disposal or handling that is used is not specified in the instructions for disposal on the pesticide label.

(4) Soils, sediments, debris, or other solids that contain pesticides that may have been altered as a result of a fire or other occurrence shall not be used as a pesticide unless laboratory analysis is obtained to confirm that the material may still be effectively used as a pesticide.

(5) Spills, leaks, releases, or other accidental discharges of pesticides or pesticide-containing materials shall be promptly contained and recovered in a manner that assures the protection of human health and the environment. Surfaces that intercept such discharges shall be promptly cleaned to assure maximum recovery. Recovered pesticides and pesticide-containing materials and materials that are used to contain, minimize, absorb, or collect spills shall be managed in accordance with subrule (1)(a) of this rule.

(6) A person shall not dispose of or handle any pesticide or any pesticide-containing material as follows:

(a) In a manner that is inconsistent with its labeling.

(b) So as to cause or allow a discharge to the environment in a manner that is inconsistent with the label instructions for use or disposal.

(c) So as to violate any state or federal pollution control statute.

(d) So as to cause or allow burying in a land site in a manner that is not in compliance with applicable state and federal solid waste regulations.

(e) So as to cause or allow the storage of pesticides or pesticide-containing materials, including rinsate or wash water, in underground tanks. This prohibition does not apply to watertight catch basins that are used for temporary collection or other recirculating systems as approved by the director.

R 285.637.9 Personal protective equipment.

Rule 9. (1) A pesticide applicator shall follow label directions regarding personal protective equipment.

(2) Commercial applicators who use a pesticide shall comply with all of the following minimum protective equipment requirements, unless otherwise directed by the pesticide product label:

- (a) Long pants shall be worn.
- (b) Footwear that provides protection from exposure to the pesticide being used shall be worn.
- (c) Long-sleeve clothing shall be worn. Short-sleeve clothing may be worn if water and soap or other protection is in place that provides comparable or great protection is immediately available and short-sleeve clothing is not prohibited by the pesticide label.
- (d) Gloves that are impervious to the pesticide in use shall be worn in any situation where the individual's hands are likely to come into contact with a pesticide, unless other protection is in place that provides comparable or greater protection.

R 285.637.10 Off-target pesticide drift.

Rule 10. (1) Pesticide applications shall be made in a manner that minimizes off-target drift, unless prior authorization and consent as specified in subrule (3) of this rule is obtained from the owner or resident of the land onto which drift may occur.

- (2) Before making a pesticide application, an applicator shall do both of the following:
 - (a) Determine the likelihood of off-target drift.
 - (b) Determine the direction of possible off-target drift and any sensitive areas that may be impacted.
- (3) When pesticide off-target drift is likely to occur due to the nature of the application or atmospheric conditions, including, but not limited to wind speed and direction, a drift management plan shall be utilized by the applicator to minimize the occurrence and adverse effects of off-target drift. The plan shall include provisions to secure the informed consent of residents in the affected area before making the application. If, in the course of making an application off-target drift occurs, the applicator shall notify the residents in the affected area either verbally or with written notification which includes the name, address, and phone number of a person who may be contacted and who is responsible for supplying information concerning the application before leaving the application site. The drift management plan shall include drift minimization practices. Such practices may include any of the following:
 - (a) The use of a possible combination of nozzles, pressure, or volume to manage droplet size.
 - (b) The use of equipment that is designed to minimize off-target drift.
 - (c) The consideration of release distance to target to maximize deposition.
 - (d) The use of drift reduction additives.
 - (e) The establishment of a no-spray buffer zone. The buffer zone may be treated with nonpowered equipment.
 - (f) The identification of the maximum wind speed and direction under which applications can be made.
 - (g) The use of wind shields or windbreaks to contain spray drift or deflect spray drift.
 - (h) Other specific measures stated in the plan that are effective in minimizing the incidence of off-target drift.
- (4) Drift management plans shall be in writing. The plan will state the measures to be used and how those measures will reduce off-target drift. The drift management plan shall be annually reviewed by the person who utilizes the plan.

(5) A record of the sites where the drift management plan was implemented and a copy of the drift management plan shall be retained for a period of 1 year for general use pesticides and 3 years for restricted use pesticides and shall be made available to the director upon request.

(6) Operating under a drift management plan does not exempt an applicator from complying with appropriate federal or state statutes and regulations. However, the department shall consider the presence and use of a drift management plan as a factor in determining appropriate enforcement action.

R 285.637.11 Commercial notification and posting requirements.

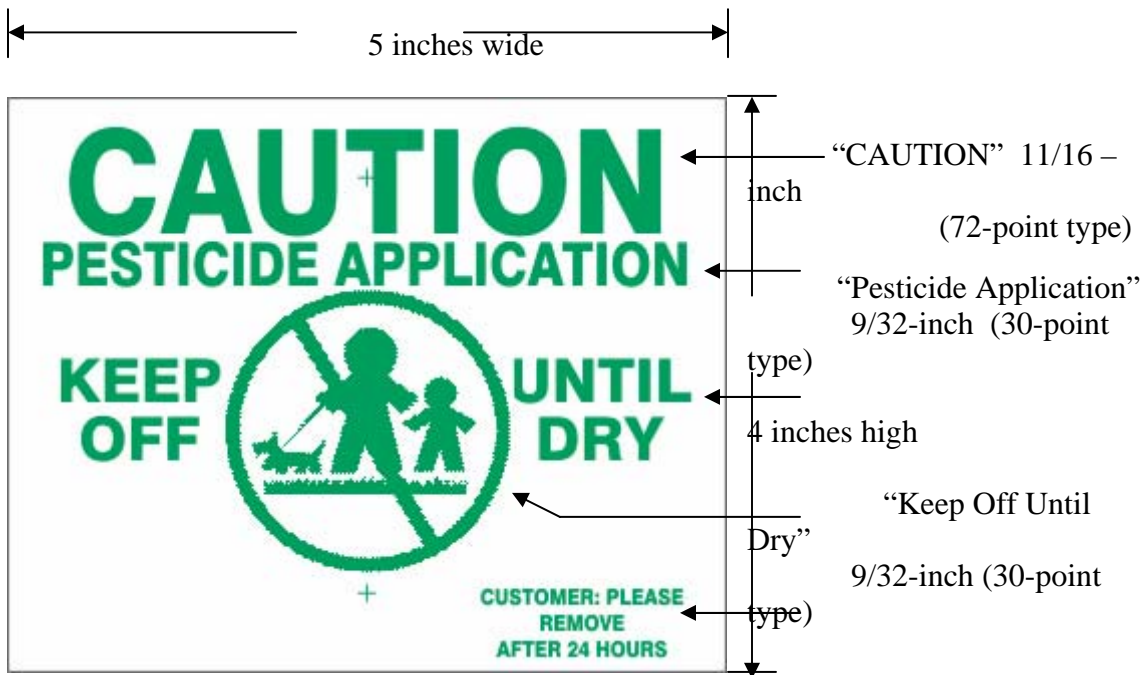
Rule 11. (1) The requirements of this rule shall not apply to general-use ready-to-use pesticide.

(2) When making a broadcast, foliar, or space application of pesticides to an ornamental or turf site, other than a golf course or farm production operation, a commercial applicator shall comply with both of the following provisions:

(a) In addition to requirements specified in R 285.637.12(1) and (2), an applicator shall inform a customer that lawn markers should remain posted for 24 hours, after which time the customer should remove the lawn markers.

(b) Immediately following the application, a commercial applicator shall place a lawn marker sign at the primary point or points of entry. Lawn markers specified in subrule (1) of this rule shall only be used when making pesticide applications and shall be in compliance with all of the following specifications:

- (i) Be 4 inches high by 5 inches wide.
- (ii) Be constructed of rigid, weather-resistant material.
- (iii) Be attached to a supporting device with the bottom of the marker extending not less than 12 inches above the turf.
- (iv) Be identically printed on both sides in green letters on a white background using the indicated point type size.
- (v) Include only the following information:
 - (A) The statement "CAUTION" in 11/16-inch high (72-point) type.
 - (B) The statement "Pesticide Application" in 9/32-inch (30-point) type.
 - (C) The statement "Keep Off Until Dry" in 9/32-inch (30-point) type.
 - (D) Have not less than a 2-inch diameter circular illustration that depicts an adult and child walking a dog on a leash. The illustration shall depict, using a diagonal line across the circle, that this action is prohibited.
 - (E) The statement "Customer: Please Remove After 24 Hours" in 3/32-inch (11-point) type.
 - (F) Additional information not required under subrule (2) of this rule may only be placed on the lawn marker or supporting device with the written approval of the department.



(3) All broadcast, foliar, or space pesticide applications that are made to public or private golf courses by a commercial applicator shall be in compliance with all of the following provisions:

(a) Applicators shall notify users of, or visitors to, the golf course in accordance with all of the following requirements:

(i) Notification of pesticide application shall be provided on a poster or placard that is constructed of all-weather material.

(ii) The poster or placard shall contain a general statement that from time to time pesticides are in use in the management of turf and ornamental pests.

(iii) The poster or placard shall state that questions or concerns that arise in relation to the pesticide application shall be directed to the golf course superintendent or his or her designated representative.

(iv) The poster or placard shall state that, upon request, the superintendent or his or her representative will supply the information specified in subdivision (b) of this subrule.

(v) The poster or placard shall be displayed prominently in the pro shop, locker rooms, or registration area.

(b) At the time of broadcast, foliar, or space pesticide application to golf course property, the applicator shall post, on the first and tenth tees, in a conspicuous place, a sign that states all of the following information:

(i) The date and time of application.

(ii) The common name of the pesticide applied.

(iii) The areas treated.

(iv) The label reentry precautions.

(v) The name of a person who may be contacted for further information.

(c) Posting requirements shall remain in effect until specific label reentry requirements have been fulfilled.

(4) A commercial applicator who makes a broadcast, foliar, or space insecticide application in a commercial building, public building, or health care facility shall comply with all of the following:

(a) The applicator shall, upon completion of an insecticide application, provide a sign to be displayed in a readily observable place at the primary point of entry by the building manager.

(b) The applicator shall instruct the building manager that the sign must be displayed and remain posted for not less than 48 hours after the most recent application of an insecticide.

(c) The building manager shall post all signs provided by the applicator in accordance with this subrule.

(d) Signs that are used for posting shall be in compliance with the following specifications:

(i) The sign shall be a minimum of 2 1/2 inches high by 2 1/2 inches wide.

(ii) Information shall be in black letters on a muted background.

(iii) The sign shall have an illustration which is not less than 1 3/4 inches high by 2 inches wide and which depicts a cloud symbol encompassing a house. This illustration shall serve to inform the public that insecticides have been applied in the building.

(iv) The sign shall have a space provided in which the date of application is to be indicated by the applicator. This information shall read: "DATE _____" in a minimum 1/8-inch (16-point) type.

(5) All of the following provisions apply to notification requirements for community or right-of-way applicators:

(a) A commercial applicator shall not make a broadcast or foliar application of pesticides for community or right-of-way pest management without making documented efforts to provide prior notification to persons who own or reside on property that is within the target area or to their authorized representatives. Prior notification shall be provided by the commercial applicator or his or her agent.

(b) Documented efforts to notify property owners, their agents, or persons who own or reside on property that is within the target area for community mosquito control pesticide applications include at least 1 of the following methods:

(i) Personal contact.

(ii) A comprehensive community outreach program, which shall be filed annually with the director.

(iii) Prior written notification.

(c) Commercial applicators who make community pesticide applications for mosquito control shall do all of the following:

(i) Provide prior notification to persons who request it.

(ii) Exclude mosquito pesticide applications from the property of those persons who request to be excluded.

(iii) Provide general information or literature about the pesticide application in response to inquiries within the targeted community. This does not include any proprietary or confidential business information.

(d) Reasonable efforts to notify property owners, their agents, or persons residing within the target area for right-of-way or community pesticide applications other than those for mosquito control shall include at least 1 of the following methods:

(i) Personal contact.

(ii) Advertisement in at least 1 newspaper of general circulation within the area of application. The notice shall be placed in the legal advertisement section.

(iii) Prior written notification.

(e) Notification of property owners shall include all the following information:

(i) The name, address, and phone number of the application firm or individual.

(ii) The brand name and active ingredients of the pesticide or pesticides used.

(iii) The method of application.

(iv) The scheduled date or dates of application.

(v) The name, address, and phone number of a person who may be contacted and who is responsible for supplying updated information concerning the application for those people who request it.

(vi) Any reentry restrictions.

(f) Multiple-use areas shall be posted for not less than 24 hours at the primary point or points of entry immediately after a pesticide application has occurred within the area. The posting shall state all of the following information:

(i) The name, address, and phone number of the application firm or individual.

(ii) The brand name and active ingredients of the pesticide or pesticides used.

(iii) The date of the application.

(iv) Precautionary warnings or reentry restrictions that appear on the label of the pesticide or pesticides that are applied.

(g) Upon petition, the director may exempt community or area-wide applicators from the requirements of subdivision (f) of this subrule if there is sufficient documentation to indicate that residues of a particular pesticide are not detectable after application.

(h) Notification requirements shall be waived in the event of a public health emergency as determined by the Michigan department of community health.

R 285.637.12 Applicator service agreements.

Rule 12. (1) Before applying a pesticide, a commercial applicator who is required to be licensed by the act, or his or her authorized agent, shall enter into an oral or written service agreement with the customer or authorized agent. The agreement shall specify all of the following:

(a) The customer's consent to services.

(b) The name, address, and telephone number of the firm that provides the pesticide application services.

(c) The approximate schedule, frequency, and duration of anticipated services.

(2) A commercial applicator who is required to be licensed by the act, or his or her authorized agent, shall provide all of the following written information to the customer or to the customer's authorized agent:

(a) The name, address, and telephone number of the firm that provides the pesticide application services.

(b) The full name of the applicator who provides services.

(c) A general description of the target pest or pests to be controlled.

(d) A list of the pesticides applied, including the common name of the active ingredient.

(e) The time and date of the application.

(f) Applicable precautionary warnings or reentry restrictions which appear on the label of the pesticide or pesticides that are applied.

(3) The information required in subrule (2) of this rule shall be provided in one of two ways:

(a) Not later than at the time of each pesticide application.

(b) The information may be provided electronically within 48 hours after the application if the commercial applicator has the written approval of the customer or the customer's authorized agent prior to the application.

(4) Not later than at the time of initial pesticide application, a commercial applicator who is required to be licensed by the act, or his or her authorized agent, shall provide all of the following written risk and benefit information to the customer or the customer's authorized agent:

(a) The definition of a pesticide.

(b) A general description of how pesticides work.

(c) Why pesticides are used.

(d) General toxicity information related to all of the following:

- (i) The type of compound used.
 - (ii) The environment in which the pesticide is applied.
 - (iii) General exposure information.
 - (iv) The amount or rate of pesticide applied.
 - (v) Proper pesticide applications in compliance with the label.
 - (e) Common sense precautionary measures for the customer regarding pesticides.
 - (f) General information on the environmental fate of pesticides.
 - (g) Instructions to the customer to discuss site preparation and precautionary measures with the pesticide applicator.
 - (h) Instructions to the customer to consult with a physician if an unusual reaction occurs.
- (5) A commercial agricultural or aerial applicator may provide the information specified in both of the following provisions to the customer or the customer's authorized agent in place of the information requirements specified in subrules (2) and (3) of this rule:
- (a) Oral instructions to the customer or the customer's authorized agent on labeled reentry and preharvest interval requirements before application.
 - (b) A copy of the risk and benefit information sheet or the pertinent section of the label that pertains to risks and benefits.
 - (6) If an emergency requires immediate pesticide application, the information that is required in subrule (2) of this rule may be provided after the application has occurred.
 - (7) The department reserves the right to review and prohibit the use of written information required to be provided to customers in subrule (3) of this rule if the director determines that the information does not meet the intent of subrule (3) of this rule.
 - (8) The duration of a service agreement shall not be more than 12 months unless either written notification of continuation of service is provided annually or unless the service agreement is a signed contract that specifies a definite time period during which the contract is valid. Written notification of continuation of service shall provide information to the customer regarding how to discontinue service.
 - (9) When requested by the customer or his or her authorized agent, the commercial applicator shall provide all of the following documents to the customer:
 - (a) Product labels.
 - (b) Material safety data sheets.
 - (c) Environmental protection agency fact sheets, if available.
 - (d) A document that specifies the rate of application of the active ingredients of the products applied.
 - (10) If the customer is acting in the interest of residents of the treated premises, then the customer shall make the information provided in this rule available to the residents upon request.

R 285.637.13 Misrepresentation of pesticide safety prohibited.

Rule 13. A commercial applicator shall not make false, misleading, deceptive, or fraudulent representations concerning pesticide safety. All of the following claims or statements are prohibited:

- (a) Any statement that ~~directly or indirectly~~ implies that a pesticide is recommended or endorsed by any federal or state agency.
- (b) Claims of absolute safety.
- (c) Unsubstantiated or comparative statements on the safety of the pesticide, including but not limited to any of the following statements:
 - (i) "Contains all natural ingredients."
 - (ii) "Among the least toxic chemicals known."
 - (iii) "Pollution approved."

R 285.637.14 Integrated pest management.

Rule 14. For all pesticide applications other than sanitizers, germicides, disinfectants, or anti-microbial agents made in schools, public buildings, day care centers, and health care facilities, both of the following provisions shall be complied with before any pesticide application:

(a) A pesticide applicator shall have verifiable participation in a training program which is approved by the director, and which includes all of the following integrated pest management elements:

- (i) Site evaluation, including all of the following:
 - (A) Site description.
 - (B) Site inspection.
 - (C) Site monitoring.
 - (D) The concept of threshold levels.
- (ii) The relationship between pest biology and pest management methods.
- (iii) Pest management methods, including population reduction techniques, such as mechanical, biological and chemical techniques, and pest prevention techniques, such as habitat modification.
- (iv) The development and implementation of an integrated pest management program, with consideration for reducing the possible impact of pesticide use on human health and the environment, including people with special sensitivities to pesticides.
- (v) Evaluation of an integrated pest management program to determine the program's effectiveness and need for modification.
- (vi) Recordkeeping requirements for public buildings and health care facilities the same as those defined in MCL 324.8304(6)(b) for schools and day care centers.
- (vii) The need to communicate with, and enlist the assistance of, building managers for the implementation of integrated pest management programs.

(b) A written integrated pest management program shall be in place for each building in which pesticide applications take place. A copy of the integrated pest management program shall be located at the school, public building, day care center or health care facility and shall include all the same elements as defined in MCL 324.8304(6) for schools and day care centers.

R 285.637.15 Pesticide use in and around schools and day care centers.

Rule 15. (1) All pesticide applications other than sanitizers, germicides, disinfectants, and anti-microbial agents that are made in and around schools, public buildings, day care centers, and health care facilities, are subject to the provisions of this rule.

(2) Outdoor ornamental and turf applications of liquid spray pesticides shall not be made on school grounds within 100 feet of occupied classroom buildings during normal school class hours or when persons are using the treatment area.

(3) An applicator shall notify the school or day care center's building manager of any reentry intervals that are required by labels of any pesticide that the applicator has applied in a school building or day care center, or on any school or day care center property.

(4) Annual notification of pesticide applications required under MCL 324.8316(2) shall include designation of the commonly used primary entrances at which posting of pesticide application information required under MCL 324.8316(3) shall occur.

(5) During the months when school is not in regular session, school administrators may utilize a message notification system that parents or guardians may access at least 1 day before application. If this alternative is utilized, parents or guardians shall be advised how the information may be obtained.

R 285.637.17 Penalties for violation of local pesticide ordinances.

Rule 17. (1) A local unit of government shall utilize the following schedule of fines for violation of local ordinances authorized by section 21a(3) of the act:

(a) A violation of R 285.637.5(8), which requires prior notification to persons on the registry, shall be subject to a fine of \$50.00 for the first offense, \$100.00 for the second offense, \$250.00 for the third offense, and \$500.00 for the fourth offense.

(b) A violation of R 285.637.11(1), (2), (3) or (5), which requires posting of lawn and ornamental sites, golf courses, community applications, and rights-of-way, shall be subject to a fine of \$25.00 for the first offense, \$50.00 for the second offense, \$100.00 for the third offense, and \$200.00 for the fourth offense.

(c) A violation of R 285.637.11(4), which requires applicators to provide building managers of commercial or public buildings, health care facilities, day-care centers, and schools with signs, shall be subject to a fine of \$25.00 for the first offense, \$50.00 for the second offense, \$100.00 for the third offense, and \$200.00 for the fourth offense.

(d) A violation of R 285.637.11(4)(c) by a building manager shall be subject to a formal warning for the first offense, a fine of \$50.00 for the second offense, a fine of \$100.00 for the third offense, and a fine of \$200.00 for the fourth offense.

(e) A violation of MCL 324.8316(2) to (4), requiring schools and day-care centers to provide information regarding pesticide applications to parents or guardians, shall be subject to a fine of \$25.00 for the first offense, \$50.00 for the second offense, \$100.00 for the third offense, and \$200.00 for the fourth offense.

(2) Multiple violations of a particular ordinance or rule that occur on the same day shall be treated as 1 violation.

(3) Each type of offense shall accumulate on a calendar year for each person subject to the local ordinance, so that at the beginning of each calendar year the offense cycle begins again, except that, for purposes of subrule (1)(d) of this rule, a building manager who has previously received a formal warning shall be subject to a fine of \$25.00 for the first offense.

(4) All offenses shall be considered as a single violation of each type until a person is notified of the issuance of a citation by the authorized local government agency.

(5) A local unit of government shall notify the person or firm alleged to be in violation within 72 hours of the issuance of a citation.

(6) A person may appeal a citation and fine assessment to the department.

(7) A local unit of government shall refer a fifth or subsequent violation by a person within a calendar year to the department for investigation and enforcement action.

(8) A local unit of government shall notify the department within 10 working days of the issuance of a citation for a violation of a local ordinance pursuant to the act.

(9) A local unit of government shall not assess fines for violations that occur before there is an incident or complaint that precipitates an investigation or before there is an observation by a local official.

ADMINISTRATIVE RULES

SOAHR 2007-008

DEPARTMENT OF LABOR AND ECONOMIC GROWTH

DIRECTOR'S OFFICE

PROFESSIONAL ENGINEERS

Filed with the Secretary of State on February 19, 2008

These rules become effective immediately upon filing with the Secretary of State.

(By authority conferred on the director of the department of labor and economic growth by 1980 PA 299, MCL 339.308 and Executive Reorganization Order Nos. 1996-2 and 2003-1, MCL 445.2001 and MCL 445.2011)

R 339.16001, R 339.16003, R 339.16021 and R 339.16025 are amended, and R 339.16026 is added to the Michigan Administrative Code as follows:

PART 1. GENERAL PROVISIONS

R 339.16001 Definitions.

Rule 1. (1) As used in these rules:

- (a) "Act" means 1980 PA 299, MCL 339.101 to 339.2919.
- (b) "Authorized representative" means the chairperson, vice chairperson, or such other member of the board or employee of the department as the board may formally designate.
- (c) "Board" means the board of professional engineers.
- (d) "Department" means the department of labor and economic growth.
- (2) Terms defined in the act have the same meanings when used in these rules.

R 339.16003 Conduct of public meetings; "chairperson" defined.

Rule 3. Board meetings are held in accordance with 1976 PA 267, MCL 15.261 to MCL 15.275, and are open to the public.

PART 2. LICENSURE

R 339.16021 Degree acceptability; criteria; experience credit; transcripts.

Rule 21. (1) A bachelor's degree shall be judged by the board for acceptability on the basis of criteria entitled "Criteria For Accrediting Engineering Programs in the United States" dated October 29, 2005, which are incorporated by reference. The accrediting criteria may be obtained at no cost from the Accreditation Board for Engineering and Technology (ABET), 7111 Market Place, Suite 1050, Baltimore, Maryland 21202, phone number: (410)347-7700; website: www.abet.org. The accrediting

criteria are also available for review at the offices of the Michigan Board of Professional Engineers, 2501 Woodlake Circle, Okemos, Michigan 48864.

(2) The department may accept 1 or both of the following as prima facie proof of a bachelor's degree in engineering, or its equivalent, acceptable to the board:

(a) Official transcripts verifying a degree which is granted by an educational institution in a program which meets the current criteria of the accreditation board for engineering and technology for programs in engineering in the United States.

(b) Official transcripts verifying possession of a master's degree in engineering from a school and program with an Engineering Accreditation Commission/Accreditation Board for Engineering and Technology (EAC/ABET) or Canadian Engineering Accreditation Board (CEAB) accredited bachelor's degree in the same engineering discipline as the master's degree.

(3) All other bachelor's degrees shall be evaluated individually through an analysis of the equivalency between the applicant's programs and the program criteria referred to in subrule (1) of this rule.

(4) The holder of a bachelor's degree in engineering accepted by the board shall be granted 4 years of experience credit toward the 8-year experience requirement established by the act.

(5) The holder of a master's degree or doctorate degree in engineering accepted by the board shall be granted an additional 1 year of experience credit, for each degree, toward the 8-year experience requirement established by the act.

(6) An applicant shall provide official transcripts and other documents as required by the department for evaluation and determination of acceptability of a degree, including documentation by the educational institution verifying that the course content of the degree meets the criteria specified in this rule.

(7) The department may accept an official transcript from an accredited educational institution as proof of completion of the required number of humanities/social science credits.

R 339.16025 Licensure by reciprocity; eligibility; experience and education; equivalency; standards; examination requirements; application; current certificate.

Rule 25. (1) A person who holds a current, valid certificate of registration or licensure as a professional engineer issued by another state or jurisdiction, or who holds a current certificate of qualification issued by the national council of engineering examiners, shall be eligible for licensure by reciprocity, subject to the act and these rules.

(2) An applicant for licensure by reciprocity shall have not less than 8 years of professional experience in engineering work satisfactory to the board, including not more than 6 years of education satisfactory to the board, and shall possess a baccalaureate degree in engineering acceptable to the board or a related degree with courses acceptable to the board. A baccalaureate degree shall be judged by the board for acceptability on the basis of criteria entitled "Criteria For Accrediting Engineering Programs" dated October 29, 2005, which are incorporated by reference. The accrediting criteria may be obtained at no cost from the Accreditation Board for Engineering and Technology, 111 Market Place, Suite 1050, Baltimore, Maryland 21202, phone number (410)347-7700, website www.abet.org. The accrediting criteria is also available for review at the offices of the Michigan Board of Professional Engineers, 2501 Woodlake Circle, Okemos, Michigan 48864. All other education shall be evaluated individually through an analysis of the equivalency between the applicant's knowledge and the program criteria referred to in this subrule.

(3) All of the following shall apply with regard to evaluating an applicant's compliance with the experience and education requirements in subrule (2) of this rule:

(a) The board may consider educational requirements equivalent to those in effect in Michigan at the time of primary licensing.

(b) The holder of a master's degree or a doctor's degree in engineering acceptable to the board may be granted an additional 1 year of experience credit for each degree toward the 8-year experience requirement established by the act.

(c) An applicant shall provide official transcripts and other documents as required by the department for evaluation and determination of acceptability of a degree, including documentation by the educational institution verifying that the course content of the degree meets the criteria specified.

(4) Acceptable professional experience in engineering is experience which is achieved after receiving a baccalaureate degree in engineering or its equivalent. This experience shall be satisfactorily performed under the direction of a professional engineer or a person of equivalent professional standing and shall be documented and verified to the department, or be such experience otherwise acceptable to the board. Engineering experience prior to graduation may be acceptable if demonstrated to be of a professional nature equal to that expected of an engineering graduate.

(5) An applicant for licensure shall have satisfactorily completed an examination which is acceptable to the board and which tested knowledge of engineering fundamentals and practice equivalent to that previously required in Michigan in the year of primary registration.

(6) The applicant for licensure by reciprocity shall provide complete documentation of the criteria in this rule and send it to the board at the department offices. The board will advise the applicant of its approval of the information submitted by the issuance of a license. If insufficient documentation is provided, the applicant may be requested to provide further information. If the department denies an applicant licensure by reciprocity, the applicant may request an appearance before the board under the act.

(7) A current certificate from the national council of examiners for engineering and surveying attesting to the attainment of required education, experience, and state licensing examinations shall be accepted as evidence of the applicant's qualifications for the issuance of a Michigan license.

(8) An applicant who holds a valid professional engineering license in another United States jurisdiction may submit verification of 5 years of licensed practice in responsible charge of engineering work acceptable to the board as equivalent to satisfactory completion of the fundamentals of engineering (FE) examination.

(9) An applicant who holds a valid professional engineer's license in another United States jurisdiction may submit verification of 15 years of licensed practice in responsible charge of engineering works acceptable to the board as equivalent to satisfactory completion of the principles and practice of engineering (PE) examination.

R 339.16026 Examination equivalency.

Rule 26. The department may consider an applicant for licensure to have satisfied the requirements of MCL 339.2004(2)(b) who satisfies both of the following:

(a) Has passed the principles and practice examination and

(b) Has passed the fundamentals of engineering examination or holds a doctoral degree in engineering from a school with an EAC/ABET or CEAB accredited bachelor's degree in the same engineering discipline as the doctoral degree, provided that the applicant's bachelor's degree is equivalent to an EAC/ABET or CEAB accredited degree.

ADMINISTRATIVE RULES

SOAHR 2007-029

DEPARTMENT OF LABOR & ECONOMIC GROWTH

WORKERS' COMPENSATION AGENCY

WORKERS' COMPENSATION HEALTH CARE SERVICES

Filed with the Secretary of State on February 21, 2008

These rules become effective 7 days after filing with the Secretary of State.

(By authority conferred on the workers' compensation agency by sections 205 and 315 of 1969 PA 317, section 33 of 1969 PA 306, Executive Reorganization Order Nos. 1982-2, 1986-3, 1990-1, 1996-2, and 2003-1, MCL 418.205, 418.315, 24.233, 18.24, 418.1, 418.2, 445.2001, and 445.2011)

R 418.10104, R 418.10107, R 418.10504, R 418.10901, R 418.10902, R 418.10909, R 418.10912, R 418.10913, R 418.10921, R 418.10922, R 418.10923, R 418.10923b, R 418.10925, R 418.101002a, R 418.101003, R 418.101005, R 418.101015, R 418.101023 are amended, and R 418.101003a is added to the Michigan Administrative Code.

R 418.10104 Reimbursement to injured worker or to health insurer for compensable medical services. Rule 104. (1) Notwithstanding any other provision of these rules, if an injured worker has paid for a health care service and at a later date a carrier is determined to be responsible for the payment, then the injured worker shall be fully reimbursed by the carrier. (2) The injured worker may submit the request for reimbursement on a medical or dental claim form, but shall supply to the carrier a copy of a statement including the provider name, the date of service, the procedure and diagnosis and documentation of the amount paid. (3) When a health insurer pays for a medical service to treat an injured worker and subsequently requests reimbursement from the workers' compensation carrier, the health insurer is not required to submit the request on a CMS 1500, or a UB-04 claim form, or other medical or dental claim form. The health insurer shall supply to the workers' compensation carrier, or the carrier's designee, a claim detail showing the date of service, the amount billed and paid, the procedure code and diagnosis for the rendered services. The workers' compensation carrier shall reimburse the health insurer the provider's usual and customary fee or the maximum allowable fee, whichever is less, for the compensable medical services in accordance with these rules. If the health insurer reimbursed the provider less than the amount allowed by these rules, then the workers' compensation carrier shall reimburse the amount paid by the health insurer.

December 3, 2007

R 418.10107 Source documents; adoption by reference.

Rule 107. The following documents, are adopted by reference in these rules and are available for inspection at, or purchase from, the workers' compensation agency, health care services division, P.O. Box 30016, Lansing, Michigan 48909, at the costs listed or from the organizations listed:

(a) "Physicians' Current Procedural Terminology (CPT®) 2008," professional edition, copyright October 2007, published by the American Medical Association, PO Box 930884, Atlanta GA, 31193-0884, order # OP138508DGE, 1-800-621-8335. The publication may be purchased at a cost of \$74.95, plus \$9.95 for shipping and handling as of the time of adoption of these rules. Permission to use this publication is on file in the workers' compensation agency.

(b) "Medicare's National Level II Codes, HCPCS, 2008," copyright December 2007, published by the American Medical Association, P.O. Box 930884 Atlanta GA 31193-0884, order # OP095108, customer service 1-800-621-8335. The publication may be purchased at a cost of \$94.95, plus \$11.95 for shipping and handling as of the time of adoption of these rules.

(c) "Medicare RBRVS 2007: The Physicians' Guide," published by The American Medical Association, P.O. Box 930876, Atlanta GA 31193-0876, order #OP059606CKF, 1-800-621-8335. The publication may be purchased at a cost of \$87.95, plus \$11.95 shipping and handling as of the time of adoption of these rules.

(d) "Medicare RBRVS 2008: The Physicians' Guide," published by The American Medical Association, P.O. Box 930884, Atlanta GA 31193-0884, order #OP059608, 1-800-621-8335. The publication may be purchased at a cost of \$89.95, plus \$11.95 shipping and handling as of the time of adoption of these rules.

(e) "International Classification of Diseases, ICD-9-CM 2008 Volumes 1 & 2," copyright September 2007, American Medical Association, P.O. Box 930884, Atlanta GA 31193-0884, order #OP065108, 1-800-621-8335. The publication may be purchased at a cost of \$92.95, plus \$11.95 shipping and handling as of the time of adoption of these rules.

(f) "2007 Drug Topics Red Book," published by Thomson PDR, PO Box 6911, Florence, KY 41022-9700, 1-800-678-5689. The publication may be purchased at a cost of \$76.95, plus \$9.95 for shipping and handling as of the time of adoption of these rules.

(g) "Official UB-04 Data Specifications Manual 2008 (v. 2.00), July 1, 2007," developed in cooperation with the American Hospital Association's National Uniform Billing committee, published by American Hospital Association, National Uniform Billing Committee – UB-04, P.O. Box 92247, Chicago, IL 60675-2247, 1-312-422-3390. As of the time of adoption of these rules, the cost of the publication is \$150.00.

R 418.10504 Multiple procedure policy for radiology procedures performed within families or groups of contiguous body parts.

Rule 504. (1) A multiple procedure payment reduction shall apply to specified radiology procedures when performed in a freestanding radiology office, a non-hospital facility, or a physician's office or clinic. The primary procedure, identified by the code with the highest relative value, shall be paid at 100% of the maximum allowable payment. If the provider's charge is less than the maximum allowable payment, then the service shall be paid at 100% of the provider's charge.

(2) The multiple payment reduction policy shall also apply when multiple radiological diagnostic imaging procedures are performed on contiguous parts of the body, listed as family-group procedures. When multiple procedures are performed within these groups or families of procedures, the 25% multiple payment reduction shall apply to the technical component only. The agency shall publish in a manual separate from these rules a table listing groups of related codes (families). When more than 1 procedure from each group (family of contiguous codes) is performed on the same date of service, the technical component for the first procedure within each group is paid at 100% of the maximum

allowable payment. Each additional procedure within the group shall have modifier –51 appended and the technical component shall be reduced to 75% of the maximum allowable payment, or the provider's charge, whichever is less.

R 418.10901 General information.

Rule 901. (1) All health care practitioners and health care organizations, as defined in these rules, shall submit charges on the proper claim form as specified in this rule. Copies of the claim forms and instruction for completion for each form shall be published separate from these rules in a manual distributed by the health care services division of the workers' compensation agency. Charges shall be submitted as follows:

- (a) A practitioner shall submit charges on the CMS1500 claim form.
- (b) A doctor of dentistry shall submit charges on a standard dental claim form approved by the American dental association.
- (c) A pharmacy, other than an inpatient hospital, shall submit charges on an invoice or a pharmacy universal claim form.
- (d) A hospital-owned occupational, industrial clinic, or office practice shall submit charges on the CMS 1500 claim form.
- (e) A hospital billing for a practitioner service shall submit charges on a CMS 1500 claim form.
- (f) Ancillary service charges shall be submitted on the CMS 1500 claim form for durable medical equipment and supplies, L-code procedures, ambulance, vision, and hearing services. Charges for home health services shall be submitted on the UB-04 claim form.
- (g) A shoe supplier or wig supplier shall submit charges on an invoice.
- (2) A provider shall submit all bills to the carrier within 1 year of the date of service for consideration of payment, except in cases of litigation or subrogation.
- (3) A properly submitted bill shall include all of the following appropriate documentation:
 - (a) A copy of the medical report for the initial visit.
 - (b) An updated progress report if treatment exceeds 60 days.
 - (c) A copy of the initial evaluation and a progress report every 30 days of physical treatment, physical or occupational therapy, or manipulation services.
 - (d) A copy of the operative report or office report if billing surgical procedure codes 10040-69990.
 - (e) A copy of the anesthesia record if billing anesthesia codes 00100-01999.
 - (f) A copy of the radiology report if submitting a bill for a radiology service accompanied by modifier - 26. The carrier shall only reimburse the radiologist for the written report, or professional component, upon receipt of a bill for the radiology procedure.
 - (g) A report describing the service if submitting a bill for a "by report" procedure.
 - (h) A copy of the medical report if a modifier is applied to a procedure code to explain unusual billing circumstances.

R 418.10902 Billing for injectable medications, other than vaccines and toxoids, in office setting.

Rule 902. (1) The provider shall not bill the carrier for administration of therapeutic injections when billing an evaluation and management procedure code. If an evaluation and management procedure code is not listed, then the appropriate medication administration procedure code may be billed.

(2) The medication being administered shall be billed with either the unlisted drug and supply code from physicians' current procedural terminology, (CPT®), or the specific J-code procedure from Medicare's National Level II Codes as adopted by reference in R 418.10107.

(3) The provider shall list the NDC or national drug code for the medication in box 19 of the CMS 1500.

(4) The carrier shall reimburse the medication in accordance with R 418.101003a.

(5) If the provider does not list the national drug code for the medication, the carrier shall reimburse the medication using the least costly NDC listed by Redbook for that medication.

R 418.10909 Billing for home health services.

Rule 909. (1) Services provided by a home health agency are considered ancillary services requiring a physician's prescription certifying medical necessity. A copy of the prescription shall be attached to the bill.

(2) A home health agency shall submit charges to the workers' compensation carrier using the UB-04 claim form.

(3) A home health agency shall use procedure codes from "HCPCS, Medicare's National Level II Codes" adopted by reference in R 418.10107 to identify services provided.

(4) A home health agency may not bill for the services of a social worker unless the certified social worker is providing medically necessary therapeutic counseling.

(5) A home health agency may bill supplies with 99070, the unlisted CPT® code for miscellaneous supplies, or the appropriate supply code from "Medicare's National Level II Codes HCPCS" as adopted by reference in R 418.10107.

(6) When a procedure code is described by "HCPCS, Medicare's Level II" as per diem, the "by report" service is reimbursed per visit. When "HCPCS, Medicare's Level II" describes a service as time-based the service is "by report," and the procedure is reimbursed according to the time provided.

R 418.10912 Billing for prescription medications.

Rule 912. (1) Prescription drugs may be dispensed to an injured worker by either an outpatient pharmacy or a health care organization as defined in these rules. These rules shall apply to the pharmacy dispensing the prescription drugs to an injured worker only after the pharmacy has either written or oral confirmation from the carrier that the prescriptions or supplies are covered by workers' compensation insurance.

(2) When a generic drug exists, the generic drug shall be dispensed. When a generic drug does not exist, the brand name drug may be dispensed. A physician may only write a prescription for "DAW", or dispense as written, when the generic drug has been utilized and found to be ineffective or has caused adverse effects for the injured worker. A copy of the medical record documenting the medical necessity for the brand name drug shall be submitted to the carrier.

(3) A bill or receipt for a prescription drug from an outpatient pharmacy, practitioner, or health care organization shall be submitted to the carrier and shall include the name, address, and social security number of the injured worker. An outpatient pharmacy shall bill the service using the universal pharmacy claim form or an invoice and shall include the national association board of pharmacy identification number and the serial number of the prescription drug.

(4) A health care organization or physician office dispensing the prescription drug shall bill the service on the CMS 1500 claim form. Procedure code 99070 shall be used to code the service and the national drug code shall be used to describe the drug.

(5) If an injured worker has paid for a prescription drug for a covered work illness, then the worker may send a receipt showing payment along with the drug information to the carrier for reimbursement.

(6) An outpatient pharmacy or health care organization shall include all of the following information when submitting a bill for a prescription drug to the carrier:

(a) The brand or chemical name of the drug dispensed.

(b) The manufacturer or supplier's name and the NDC, or national drug code from the "Red Book" as adopted by reference in R 418.10107.

(c) The dosage, strength, and quantity dispensed.

(d) The date the drug was dispensed.

(e) The physician prescribing the drug.

(7) A practitioner or a health care organization, other than an inpatient hospital, shall bill WC700-G to describe the dispense fee for each generic prescription drug and WC700-B to describe the dispense fee for each brand name prescription drug. A provider will only be reimbursed for 1 dispense fee for each prescription drug in a 10-day period. A dispense fee shall not be billed with “OTC”s, over-the-counter drugs.

R 418.10913 Billing for durable medical equipment and supplies.

Rule 913. (1) Durable medical equipment (DME) and supplies shall be billed using the appropriate descriptor from HCPCS, Medicare’s National Level II codes, as referenced in R 418.10107, for the service. If the equipment or supply is billed using an unlisted or not otherwise specified code and the charge exceeds \$35.00, then an invoice shall be included with the bill.

(2) Initial claims for rental or purchased DME shall be filed with a prescription for medical necessity, including the expected time span the equipment will be required.

(3) Durable medical equipment may be billed as a rental or a purchase. If possible, the provider and carrier shall agree before dispensing the item as to whether it should be a rental or a purchased item. With the exception of oxygen equipment, rented DME is considered purchased equipment once the monthly rental allowance exceeds the purchase price or payment of 12 months rental, whichever comes first.

(a) If the worker’s medical condition changes or does not improve as expected, then the rental may be discontinued in favor of purchase.

(b) If death occurs, rental fees for equipment will terminate at the end of the month and additional rental payment shall not be made.

(c) The return of rented equipment is the dual responsibility of the worker and the DME supplier. The carrier is not responsible and shall not be required to reimburse for additional rental periods solely because of a delay in equipment returns.

(d) Oxygen equipment shall be considered a rental as long as the equipment is medically necessary. The equipment rental allowance includes reimbursement for the oxygen contents.

(4) A bill for an expendable medical supply shall include the brand name and the quantity dispensed.

(5) A bill for a miscellaneous supply, for example; a wig, shoes, or shoe modification, shall be submitted on an invoice if the supplier is not listed as a health care professional.

R 418.10921 Facility billing.

Rule 921. (1) Except for a freestanding surgical outpatient facility, a licensed facility as defined in these rules shall submit facility charges on a UB-04 claim form to the carrier. A copy of the UB-04 form shall be published separate from these rules in a manual distributed by the health care services division of the agency. The Official UB-04 Data Specifications Manual referenced in these rules contains instructions for facility billing.

(2) A facility billing for a practitioner service shall bill charges on the CMS 1500 claim form.

R 418.10922 Hospital billing instructions.

Rule 922. (1) A hospital shall bill facility charges on the UB-04 national uniform billing claim form and shall include revenue codes, ICD.9.CM coding, HCPCS codes, and CPT® codes to identify the surgical, radiological, laboratory, medicine, and evaluation and management services. This rule only requires that the following medical records be attached when appropriate:

Emergency room report.

The initial evaluation and progress reports every 30 days whenever physical medicine, speech, and hearing services are billed.

The anesthesia record when billing for a CRNA or anesthesiologist.

(2) A properly completed UB-04 shall not require attachment of medical records except for those in sub rule (1) of this rule to be considered for payment. Information required for reimbursement is included on the claim form. A carrier may request any additional records under R 418.10118.

(3) If a hospital clinic, other than an industrial or occupational medicine clinic, bills under a hospital's federal employer identification number, then a hospital clinic facility service shall be identified by using revenue code 510 "clinic."

(4) A hospital system-owned office practice shall bill services on the CMS 1500 claim form using the office site of service and shall not bill facility fees.

(5) A hospital or hospital system-owned industrial or occupational clinic providing occupational health services shall bill services on the CMS 1500 claim form using the office site of service and shall not bill facility fees.

R 418.10923 Hospital billing for practitioner services.

Rule 923. (1) A hospital billing for practitioner services, including a certified registered nurse anesthetist, a physician, a nurse who has a specialty certification, and a physician's assistant, shall submit bills on a CMS 1500 form and the hospital shall use the appropriate procedure codes adopted by these rules. A hospital shall bill for professional services provided in the hospital clinic setting as practitioner services on a CMS 1500 form using outpatient hospital for the site of service. A hospital or hospital system-owned office practice shall bill all office services as practitioner services on a CMS 1500 form using office or clinic for the site of service. A hospital or hospital system-owned industrial or occupational clinic providing occupational health services for injured workers shall bill all clinic services as practitioner services on a CMS 1500 using office or clinic for the site of service. A hospital or hospital system-owned industrial or occupational clinic shall not use emergency department evaluation and management procedure codes. Radiology and laboratory services may be billed as facility services on the UB-04.

(2) A hospital billing for the professional component of a medical service, excluding physical medicine, occupational medicine, or speech and hearing services shall bill the service on a CMS 1500 claim form adding modifier -26 identifying the bill is for the professional component of the service. The bill shall indicate outpatient hospital for the site of service. The carrier shall pay the maximum allowable fee listed in the manual for the professional component of the procedure. If the professional component is not listed, then the carrier shall pay 40% of the maximum allowable fee.

(3) A hospital billing for a radiologist's or pathologist's services shall bill the professional component of the procedure on the CMS 1500 claim form and shall place modifier -26 after the appropriate procedure code to identify the professional component of the service. The carrier shall pay the maximum allowable fee listed in the manual for the professional component of the procedure. If the professional component is not listed, then the carrier shall pay 40% of the maximum allowable fee.

(4) A hospital billing for a certified registered nurse anesthetist shall bill only time units of an anesthesiology procedure and use modifier -QX with the appropriate anesthesia code, except in the absence of medical direction from a supervising anesthesiologist.

R 418.10923b Billing for freestanding surgical outpatient facility, (FSOF).

Rule 923b. (1) A freestanding surgical outpatient facility (FSOF) shall be licensed by the department of public health, bureau of health systems, under part 208 of the code. The owner or operator of the facility

shall make the facility available to other physicians, dentists, podiatrists or providers who comprise its professional staff.

(a) When a surgery procedure is appropriately performed in the freestanding surgical outpatient facility and Medicare has not assigned a grouper number for that procedure, the procedure shall be considered by report.

(b) The freestanding surgical outpatient facility shall be reimbursed either the usual and customary charge or reasonable charge, whichever is less for the procedure.

(2) Billing instructions in this rule do not apply to a hospital-owned freestanding surgical outpatient facility billing with the same tax identification number as the hospital.

(3) A freestanding surgical outpatient facility, licensed by the state, shall bill the facility services on the CMS 1500 claim form and shall include modifier SG to identify the service as the facility charge. The place of service shall be “24.” The appropriate HCPCS or CPT® procedure code describing the service performed shall be listed on separate lines of the bill.

(4) Modifier 50, generally indicating bilateral procedure is not valid for the FSOFF claim. Procedures performed bilaterally shall be billed on two separate lines of the claim form and shall be identified with modifiers, LT for left and RT for right.

(5) A freestanding surgical outpatient facility shall only bill for outpatient procedures which, in the opinion of the attending physician, can be performed safely without requiring inpatient overnight hospital care and are exclusive of such surgical and related care as licensed physicians ordinarily elect to perform in their private offices.

(6) The CPT® procedure code billed by the facility is classified according to groupers, as determined by center for Medicare and Medicaid services. The grouper number for each procedure code is published in the federal register.

(7) The payment for the surgical code includes the supplies for the procedure.

(8) Laboratory procedures, durable medical equipment, radiology services, and items implanted into the body that remain in the body at discharge from the facility may be billed separately.

(9) The facility shall bill implant items with the unlisted CPT® drug and supply code, 99070. A report listing a description of the implant and a copy of the facility’s cost invoice shall be included with the bill. Some examples of implant items are plates, pins, screws, mesh.

(10) When radiology procedures are performed intra-operatively, only the technical component shall be billed by the facility and reimbursed by the carrier. The professional component shall be included with the surgical procedure. Pre-operative and post-operative radiology services may be globally billed.

(11) At no time shall the freestanding surgical outpatient facility bill for practitioner services on the facility bill.

R 418.10925 Billing requirements for other licensed facilities.

Rule 925. (1) A licensed facility, other than a hospital or freestanding surgical outpatient facility, shall bill the facility services on the UB-04 national uniform billing claim form and shall include the revenue codes contained in the Official UB-04 Data Specifications Manual, ICD-9-CM coding for diagnoses and procedures, and CPT® procedure codes for surgical, radiological, laboratory, and medicine and evaluation and management services.

(2) Only the technical component of a radiological service or a laboratory service shall be billed on the standardized UB-04 national uniform billing claim form.

(3) All bills for the professional services shall be billed on a CMS 1500 claim form, using the appropriate CPT® procedure code and modifier.

(4) A report describing the services provided and the condition of the patient shall be included with the bill.

R 418.101002a Conversion factor for practitioner services.

Rule 1002a. (1) The workers' compensation agency shall determine the conversion factor for medical, surgical, and radiology procedures. The conversion factor shall be used by the workers' compensation agency for determining the maximum allowable payment for medical, surgical, and radiology procedures. The maximum allowable payment shall be determined by multiplying the appropriate conversion factor times the relative value unit assigned to a procedure. The relative value units are listed for the medicine, surgical, and radiology procedure codes in a manual separate from these rules. The manual shall be published annually by the workers' compensation agency using codes adopted from "Physicians' Current Procedural Terminology (CPT®)" as referenced in R 418.10107 (a). The workers' compensation agency shall determine the relative values by using information found in the "Medicare RBRVS: The Physicians' Guide" as adopted by reference in R 418.10107 (c).

(2) The conversion factor for medicine, radiology, and surgical procedures shall be \$50.20 for the year 2008 and shall be effective for dates of service on the effective date of these rules.

R 418.101003 Reimbursement for "by report" and ancillary procedures.

Rule 1003. (1) If a procedure code does not have a listed relative value, or is noted BR, then the carrier shall reimburse the provider's usual and customary charge or reasonable payment, whichever is less, unless otherwise specified in these rules.

(2) The following ancillary services are by report and the provider shall be reimbursed either at the practitioner's usual and customary charge or reasonable payment, whichever is less:

(a) Ambulance services.

(b) Dental services.

(c) Vision and prosthetic optical services.

(d) Hearing aid services.

(e) Home health services.

(3) Orthotic and prosthetic procedures, L0100-L8499, that have assigned maximum allowable payments shall be listed in R 418.101504. Orthotic and prosthetic procedures not listed in R 418.101504 shall be by report

R 418.101003a Reimbursement for dispensed medications

Rule 101003a. (1) Prescription medication shall be reimbursed at the average wholesale price (AWP) minus 10%, as determined by the Red Book, referenced in R 418.10107, plus a dispense fee.

(a) The dispense fee for a brand name drug shall be \$3.50 and shall be billed with WC700-B.

(b) The dispense fee for a generic drug shall be \$5.50 and shall be billed with WC700-G.

(2) Over-the-counter drugs (OTC's), dispensed by a provider other than a pharmacy, shall be dispensed in 10-day quantities and shall be reimbursed at the average wholesale price, as determined by the Red Book, or \$2.50, whichever is greater.

R 418.101005 Reimbursement for home health services.

Rule 1005. (1) Home health services are reimbursed "by report," requiring submission of a report with the charges on the UB-04 claim form. The carrier shall reimburse the home health agency according to each "by report" procedure listed on the UB-04, billed with the appropriate HCPCS code in accord with R 418.10909.

(2) Home health services shall be reimbursed by the carrier at either the provider's usual and customary charge as defined by these rules or reasonable amount, whichever is less.

(3) Services listed in “HCPCS, Medicare Level II Codes” as adopted by reference in R 418.10107 as per diem shall be reimbursed per diem or per visit in accord with the description of the code. The per diem visit shall be either at the provider’s usual and customary charge or reasonable amount, whichever is less.

(4) Supplies and durable medical equipment (DME) shall be reimbursed pursuant to these rules.

R 418.101015 General rules for facility reimbursement.

Rule 1015. (1) A facility licensed by the state of Michigan shall receive the maximum allowable payment in accordance with these rules. The facility shall follow the process specified in these rules for resolving differences with a carrier regarding payment for the appropriate health care services rendered to an injured worker.

(2) The carrier or its designated agent shall assure that the UB-04 national uniform billing claim form is completed correctly before payment. A carrier’s payment shall reflect any adjustments in the bill made through the carrier’s utilization review program.

(3) A carrier shall pay, adjust or reject a properly submitted bill within 30 days of receipt, sending notice on a form entitled “Carrier’s Explanation of Benefits” in a format specified by the agency. The carrier shall reimburse the facility a 3% late fee if more than 30 days elapse between a carrier’s receipt of a properly submitted bill and a carrier’s mailing of the payment.

(4) Submission of a correctly completed UB-04 claim form shall be considered to be a properly submitted bill. The following medical records shall also be attached to the facility charges as applicable: Emergency room report.

The initial evaluations and progress reports every 30 days whenever physical medicine, speech and hearing services are billed by a facility.

The anesthesia record whenever the facility bills for the services of a CRNA or anesthesiologist.

(5) Additional records not listed in subrule (4) of this rule may be requested by the carrier and shall be reimbursed in accordance with R 418.10118.

R 418.101023 Reimbursement for freestanding surgical outpatient facility service.

Rule 1023. (1) Reimbursement for surgical procedures performed in a freestanding surgical outpatient facility shall be determined by using grouper rates as determined by Medicare and published in the Federal Register. An allowable rate is assigned to each grouper and the payment is determined by multiplying the grouper rate times a wage index. The rates for the groupers shall be published by the agency in the Health Care Services Manual. The wage index shall be determined by the workers’ compensation agency and shall be published in the Health Care Services Manual.

(2) The state of Michigan workers’ compensation health care services rules shall adopt the payment system described in subrule (1) of this rule adding 80% to the rate reflecting a payment that is 80% higher than Medicare. The formula for determining the maximum allowable payment (MAP) for a surgical procedure performed in a freestanding surgical outpatient facility shall be as follows: (grouper rate) x (1.8) x (wage-index).

(3) When 2 or more surgical procedures are performed in the same operative session, the facility shall be reimbursed at 100% of the maximum allowable payment or the facility’s usual and customary charge, whichever is less, for the procedure classified in the highest payment group. Any other surgical procedures performed during the same session shall be reimbursed at 50% of the maximum allowable payment or 50% of the facility’s usual and customary charge, whichever is less. A facility shall not unbundle surgical procedure codes when billing the services.

- (4) When an eligible procedure is performed bilaterally, each procedure shall be listed on a separate line of the claim form and shall be identified with LT for left and RT for right. At no time shall modifier 50 be used by the facility to describe bilateral procedures.
- (5) If an item is implanted during the surgical procedure and the freestanding surgical outpatient facility bills the implant and includes the copy of the invoice, then the implant shall be reimbursed at the cost of the implant plus a percent markup as follows:
 - (a) Cost of implant: \$1.00 to \$500.00 shall receive cost plus 50%.
 - (b) Cost of implant: \$500.01 to \$1000.00 shall receive cost plus 30%.
 - (c) Cost of implant: \$1000.01 and higher shall receive cost plus 25%.
- (6) Laboratory services shall be reimbursed by the maximum allowable payment as determined in R 418.101503.
- (7) When a radiology procedure is performed intra-operatively, only the technical component shall be billed by the facility and reimbursed by the carrier. The professional component shall be included with the surgical procedure. Pre-operative and post-operative radiology services may be globally billed.
- (8) When the freestanding surgical facility provides durable medical equipment, the items shall be reimbursed in accord with R 418.101003b.

**PROPOSED ADMINISTRATIVE RULES,
NOTICES OF PUBLIC HEARINGS**

MCL 24.242(3) states in part:

“... the agency shall submit a copy of the notice of public hearing to the State Office of Administrative Hearings and Rules for publication in the Michigan register. An agency's notice shall be published in the Michigan register before the public hearing and the agency shall file a copy of the notice of public hearing with the State Office of Administrative Hearings and Rules.”

MCL 24.208 states in part:

“Sec. 8. (1) The State Office of Administrative Hearings and Rules shall publish the Michigan register at least once each month. The Michigan register shall contain all of the following:

* * *

(d) Proposed administrative rules.

(e) Notices of public hearings on proposed administrative rules.”

PROPOSED ADMINISTRATIVE RULES

SOAHR 2007-026

DEPARTMENT OF ENVIRONMENTAL QUALITY

AIR QUALITY DIVISION

AIR POLLUTION CONTROL

Filed with the Secretary of State on

This rule becomes effective immediately upon filing with the Secretary of State unless adopted under sections 33, 44, 45a(6), or 48 of 1969 PA 306. Rules adopted under these sections become effective 7 days after filing with the Secretary of State.

(By authority conferred on the director of the department of environmental quality by sections 5503 and 5512 of 1994 PA 451, MCL 324.5503 and 324.5512, and Executive Reorganization Order No. 1995-18, MCL 324.99903)

Draft 2/14/2008

R 336.1940, R 336.1941, and R 336.1942 of the Michigan Administrative Code are amended; and R 336.1902, R 336.1943, R 336.1944, R 336.1945, R 336.1946, R 336.1947, R 336.1970, and R 336.1971 are added to the Code as follows:

PART 9. EMISSION LIMITATIONS AND PROHIBITIONS—MISCELLANEOUS

R 336.1902 Adoption of standards by reference.

Rule 902. The following standards are adopted in these rules by reference and are available as noted. Copies are available for inspection and purchase at the Air Quality Division, Department of Environmental Quality, 525 West Allegan Street, P.O. Box 30260, Lansing, Michigan 48909-7760, at a cost as of the time of adoption of these rules (AQD price). Copies may be obtained from the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954, at a cost as of the time of adoption of these rules (GPO price), or on the United States government printing office internet web site at <http://www.access.gpo.gov>:

(a) Title 40 C.F.R., part 51, appendix Y, “Guidelines for BART Determinations Under the Regional Haze Rule,” and 40 C.F.R. §51.301, “Definitions,” (2007) AQD price \$55.00; GPO price \$45.00.

(b) Title 40 C.F.R., part 61, subpart M, “National Emission Standards for Asbestos” (2007); AQD price \$55.00; GPO price \$45.00.

(c) Title 40 C.F.R., part 63, subpart A, entitled “General Provisions” (2007); AQD price \$68.00; GPO price \$58.00.

(d) Title 40 C.F.R., part 63, subpart N, “National Emission Standards for Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks” (2007); AQD price \$68.00; GPO price \$58.00.

(e) Title 40 C.F.R., part 63, subpart O, “Ethylene Oxide Emissions Standards for Sterilization Facilities” (2007); AQD price \$68.00; GPO price \$58.00.

(f) Title 40 C.F.R., part 63, subpart LLL, “National Emission Standards for Hazardous Air Pollutants from the Portland Cement Manufacturing Industry” (2007); AQD price \$60.00; GPO price \$50.00.

(g) Title 40 C.F.R., part 63 subpart RRR, “National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production” (2007); AQD price \$42.00; GPO price \$32.00.

(h) Title 40 C.F.R., part 63, subpart VVV, “National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works” (2007); AQD price \$42.00; GPO price \$32.00.

(i) Title 40 C.F.R., part 63, subpart GGGGG, “National Emission Standards for Hazardous Air Pollutants: Site Remediation” (2007); AQD price \$42.00; GPO price \$32.00.

R 336.1940 Emission standards for ethylene oxide commercial sterilization and fumigation operations; adoption by reference.

Rule 940. ~~(1)~~—The provisions of 40 C.F.R., part 63 subpart O ~~(1999)~~, are adopted by reference in these rules **R 336.1902**. A person responsible for the operation of a facility subject to the provisions of 40 C.F.R., part 63, subpart O, entitled “~~National Emission Standards for Hazardous Air Pollutants for Ethylene Oxide Commercial Sterilization and Fumigation Operations,~~” “**Ethylene Oxide Emissions Standards for Sterilization Facilities,**” shall comply with those provisions.

~~—(2) A copy of 40 C.F.R., part 63 subpart O (1999), is available for inspection and purchase at the Air Quality Division, Department of Environmental Quality, 106 West Allegan Street, P.O. Box 30260, Lansing, Michigan 48909-7760, at a cost at the time of adoption of this rule of \$58.00. Copies may be obtained from the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, Pennsylvania, 15250-7954, at a cost at the time of adoption of this rule of \$58.00.~~

R 336.1941 Emission standards for chromium emissions from hard chromium electroplating, decorative chromium electroplating, and chromium anodizing tanks; adoption by reference.

Rule 941. ~~(1)~~—The provisions of 40 C.F.R., part 63 subpart N ~~(1999)~~, are adopted by reference in these rules **R 336.1902**. A person responsible for the operation of a facility that is subject to the provisions of 40 C.F.R., part 63, subpart N ~~(1999)~~, entitled “~~National Emission Standards for Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks,~~” shall comply with those provisions.

~~—(2) A copy of 40 C.F.R., part 63 subpart N (1999), is available for inspection and purchase at the Air Quality Division, Department of Environmental Quality, 106 West Allegan Street, P.O. Box 30260, Lansing, Michigan 48909-7760, at a cost at the time of adoption of this rule of \$58.00. Copies may be obtained from the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954, at a cost at the time of adoption of this rule of \$58.00.~~

R 336.1942 Emission standards for asbestos; adoption by reference.

Rule 942. (1) The provisions of 40 C.F.R., part 61 subpart M ~~(1999)~~, are adopted by reference in these rules **R 336.1902**. A person that is subject to the provisions of 40 C.F.R., part 61, subpart M, entitled “~~National Emission Standards for Asbestos,~~” shall comply with those provisions.

~~—(2) A copy of 40 C.F.R., part 61 subpart M is available for inspection and purchase at the Air Quality Division, Department of Environmental Quality, 106 West Allegan Street, P.O. Box 30260, Lansing, Michigan 48909-7760, at a cost at the time of adoption of this rule of \$19.00. Copies may be obtained from the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954, at a cost as of the time of adoption of this rule of \$19.00.~~

(2) For the purpose of this rule, the term “administrator” as used in §61.02 means the department.

R 336.1943 General provisions for emission standards; adoption by reference.

Rule 943. (1) The provisions of 40 C.F.R., part 63, subpart A, are adopted by reference in R 336.1902. The owner or operator of a facility subject to the provisions of 40 C.F.R., part 63 subpart A, entitled “General Provisions,” shall comply with those provisions.

(2) For purposes of this rule, the terms “administrator” and “EPA” as used in §63.2 mean the department.

R 336.1944 Emission standards for Portland cement manufacturing; adoption by reference.

Rule 944. The provisions of 40 C.F.R., part 63, subpart LLL, are adopted by reference in R 336.1902. The owner or operator of a facility subject to the provisions of 40 C.F.R., part 63, subpart LLL, entitled “National Emission Standards for Hazardous Air Pollutants from the Portland Cement Manufacturing Industry,” shall comply with those provisions.

R 336.1945 Emission standards for publicly owned treatment works; adoption by reference.

Rule 945. The provisions of 40 C.F.R., part 63, subpart VVV, are adopted by reference in R 336.1902. The owner or operator of a facility subject to the provisions of 40 C.F.R., part 63, subpart VVV, entitled “National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works,” shall comply with those provisions.

R 336.1946 Emission standards for secondary aluminum production; adoption by reference.

Rule 946. The provisions of 40 C.F.R., part 63, subpart RRR, are adopted by reference in R 336.1902. The owner or operator of a facility subject to the provisions of 40 C.F.R., part 63 subpart RRR, entitled “National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production,” shall comply with those provisions.

R 336.1947 Emission standards for site remediation; adoption by reference.

Rule 947. The provisions of 40 C.F.R., part 63, subpart GGGGG, are adopted by reference in R 336.1902. The owner or operator of a facility subject to the provisions of 40 C.F.R., part 63, subpart GGGGG, entitled “National Emission Standards for Hazardous Air Pollutants: Site Remediation,” shall comply with those provisions.

R 336.1970 Best available retrofit technology; adoption by reference.

Rule 970. (1) The provisions of 40 C.F.R., part 51, appendix Y, “Guidelines for BART Determinations Under the Regional Haze Rule,” and 40 C.F.R. §51.301, “Definitions,” are adopted by reference in R 336.1902.

R 336.1971 Best available retrofit technology or BART program.

Rule 971. (1) The department shall determine applicability of best available retrofit technology based on the provisions referenced in R 336.1970.

(2) The owner or operator of a unit subject to BART shall perform an engineering analysis as described in the provisions referenced in R 336.1970 and shall provide the results of the analysis to the department within 60 days of the effective date of R 336.1970 and R 336.1971.

(3) The department shall determine the BART level of control for each unit subject to BART based on the engineering analysis referenced in subrule (2) of this rule, the provisions referenced in R 336.1970, and other information which the department determines to be relevant.

(4) The owner or operator of a unit subject to BART shall enter into a permit to install or consent order with the department to make the BART provisions legally enforceable.

(5) The permit or consent order shall be issued or entered within 90 days of the effective date of R 336.1970 and R 336.1971. BART controls shall be in place and operating not later than December 31, 2012.

(6) An owner or operator subject to this rule shall measure oxides of nitrogen and sulfur dioxide emissions with 1 or more of the following:

(a) A continuous emission monitoring system.

(b) An alternate method as described in 40 C.F.R. part 60 or 75, adopted by reference in R 336.1801, as applicable and acceptable to the department.

(c) A method currently in use and acceptable to the department, including methods contained in existing permit conditions.

(7) An owner or operator of an emission unit that measures oxides of nitrogen or sulfur dioxide emissions by a continuous emission monitoring system shall do either of the following:

(a) Use procedures set forth in 40 C.F.R., part 60, subpart A and appendix B, and comply with the quality assurance procedures in appendix F, adopted by reference in R 336.1801 as applicable and acceptable to the department.

(b) Use procedures set forth in 40 C.F.R., part 75, and associated appendices, adopted by reference in R 336.1801, as applicable and acceptable to the department.

(8) An owner or operator of an emission unit who uses a continuous emission monitoring system to demonstrate compliance with this rule and who has already installed a continuous emission monitoring system for oxides of nitrogen or sulfur dioxide pursuant to other applicable federal, state, or local rules shall meet the installation, testing, operation, quality assurance, and reporting requirements specified by the department.

(9) An owner or operator of an emission unit that is subject to this rule shall submit at a minimum semiannual summary reports, in an acceptable format, to the department within 30 days following June 30 and December 31 of each calendar year. The reports shall include all of the following information:

(a) The date, time, magnitude of emissions, and emission rates where applicable, of the specified emission unit or utility system.

(b) If emissions or emission rates exceed the emissions or emission rates allowed by the applicable emission limit, the cause, if known, and any corrective action taken.

(c) The total operating time of the emission unit during the time period.

(d) For continuous emission monitoring systems, system performance information shall include the date and time of each period during which the continuous monitoring system was inoperative, except for zero and span checks, and the nature of the system repairs or adjustments. When the continuous monitoring system has not been inoperative, repaired, or adjusted, the information shall be stated in the report.

(10) Quarterly summary reports, if required by the department pursuant to R 336.1213, shall be submitted within 30 days following the end of the calendar quarter and may be used in place of the semi-annual reports required pursuant to subrule (9) of this rule.

NOTICE OF PUBLIC HEARING

SOAHR 2007-026
NOTICE OF PUBLIC HEARING
DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR QUALITY DIVISION

The Michigan Department of Environmental Quality (DEQ), Air Quality Division, will conduct a public hearing on proposed administrative rules promulgated pursuant to Part 55, Air Pollution Control, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (Act 451); R 336.1902, R 336.1940 to R 336.1947, R 336.1970, and R 336.1971. The proposed rules adopt federal Maximum Available Control Technology (MACT) Standards and Best Available Retrofit Technology (BART) standards for the federal regional haze rules.

The public hearing will be held on April 14, 2008, at 10:00 a.m., in the Constitution Hall, Brake Conference Room, Atrium South, 525 West Allegan Street, Lansing, Michigan.

Copies of the proposed rules (SOAHR 2007-026EQ) can be downloaded from the Internet at: <http://www.michigan.gov/deqair>. These rules can also be downloaded from the Internet through the State Office of Administrative Hearings and Rules at <http://www.michigan.gov/soahr>. Copies of the rules may also be obtained by contacting the Lansing office at:

Air Quality Division
Michigan Department of Environmental Quality
P.O. Box 30260
Lansing, Michigan 48909-7760
Phone: 517-373-7045
Fax: 517-241-7499
E-Mail: halbeisenm@Michigan.gov

All interested persons are invited to attend and present their views. It is requested that all statements be submitted in writing for the hearing record. Anyone unable to attend may submit comments in writing to the address above. Written comments must be received by 5:00 p.m. on April 14, 2008.

Persons needing accommodations for effective participation in the meeting should contact the Air Quality Division at 517-373-7045 one week in advance to request mobility, visual, hearing, or other assistance.

This notice of public hearing is given in accordance with Sections 41 and 42 of Michigan's Administrative Procedures Act, 1969 PA 306, as amended, being Sections 24.241 and 24.242 of the Michigan Compiled Laws. Administration of the rules is by authority conferred on the Director of the DEQ by Sections 5503 and 5512 of Act 451, being Sections 324.5503 and 324.5512 of the Michigan Compiled Laws, and Executive Order 1995-18. These rules will become effective immediately after filing with the Secretary of State.

Air Quality Division

PROPOSED ADMINISTRATIVE RULES

SOAHR 2007-062

DEPARTMENT OF EDUCATION

SUPERINTENDENT OF PUBLIC INSTRUCTION

SCHOOL DISTRICT PUPIL ACCOUNTING FOR DISTRIBUTION OF STATE AID

Filed with the Secretary of State on

These rules become effective on July 1, 2008.

(By authority conferred on the superintendent of public instruction by sections 1281 and 1284 of 1976 PA 451, MCL 380.1281, MCL 380.1284, sections 6, 13, and 101 of 1979 PA 94, MCL 388.1606, MCL 388.1613 and MCL 388.1701, and Executive Reorganization Orders Nos. 1996-6 and 1996-7, MCL 388.993 and 388.994)

Draft January 29, 2008

R 340.1, R 340.2, R 340.3, R 340.4, R 340.7, R 340.10, R 340.11, R 340.12, R 340.13, R 340.14, R 340.15, R 340.16 and R 340.17 of the Michigan Administrative Code are amended; R 340.10a and R 340.18 are added to the Code; and R 340.5 and R 340.6 are rescinded as follows:

R 340.1 Count days and total membership. Definitions.

Rule 1. ~~(1) Pupil membership of a school district shall be the count made on the fourth Friday after Labor Day. However, in a district maintaining school during the entire year, pupil membership shall be determined on the 4 count days prescribed in subrule (3).~~

~~–(2) Except as provided in subrule (3) the membership of a school district is the number of pupils legally enrolled at the close of school on the fourth Friday following Labor Day in the school year.~~

~~–(3) The membership of a school district maintaining school during the entire school year is the number of pupils legally enrolled at the close of school on the following days:~~

~~–(a) Fourth Friday in July.~~

~~–(b) Fourth Friday in October.~~

~~–(c) Fourth Friday in January.~~

~~–(d) Fourth Friday in April.~~

~~–(4) A pupil shall not be counted under subrule (3) more than 3 times and each full-time pupil shall be counted as 1/3 membership at each count. As used in these rules:~~

(a) “Attendance” means the presence of a pupil on scheduled school days under the guidance and direction of a certificated teacher either at or away from school.

(b) “Count date” means the pupil membership count day pursuant to section 6(7) of 1979 PA 94, MCL 388.1606(7) and the supplemental pupil count pursuant to section 6a of 1979 PA 94, MCL 388.1606a.

(c) “Enroll” or “register” means the act of a pupil appearing in person at a school at any time during the current school term with an intent to attend the school. This enrollment or registrative process of entrance constitutes the act of becoming a pupil of the school district. A pupil unable to

appear in school due to physical incapacity or illness, attested to by a physician or equivalent licensed authority, may be enrolled by an agent of the school district who personally contacts the pupil.

(d) “Online learning” means a structured learning activity that utilizes technology with intranet or internet-based tools and resources as the delivery method for instruction, research, assessment, and communication.

(e) “School district” or “district” means “district” as defined under section 3 of 1979 PA 94, MCL 388.1603.

R 340.2 Pupils to be counted in membership.

Rule 2. (1) To be counted in membership on the count dates ~~as provided by these rules~~, a pupil shall be enrolled **and** in regular daily attendance in the school district and maintain such status of enrollment on the count day, **as provided by statute or these rules.** ~~except that in a school district operating an extended school year program approved by the state board of education, a pupil enrolled but not scheduled to be in attendance on the count day shall be counted. An extended school year is considered to comprise more than the traditional annual term of instruction and less than an entire year. A school district shall not receive credit for more than 1 full time membership per pupil regardless of the programs in which the pupil is enrolled.~~

~~(2) “Enroll” or “register” means the act of a pupil appearing in person at a school at any time during the current school term with an intent to attend the school. This enrollment or registrative process of entrance constitutes the act of becoming a pupil of the school district. A pupil unable to appear in school due to physical incapacity or illness, attested to by a physician or equivalent licensed authority, may be enrolled by an agent of the school district who personally contacts the pupil. “Attendance” means the presence of a pupil on scheduled school days under the guidance and direction of professional employee staff members either at or away from school.~~

(2) A pupil who is enrolled and in attendance in a district prior to the count day, but is not in attendance in the district on the count day and is enrolled and in attendance in another district on the count day, shall not be counted in the former district but shall be counted in the membership in the latter district.

(3) A pupil who is enrolled and in attendance on the count day in more than 1 district shall be counted on a pro rata basis based upon the time of attendance in each district on the count day.

(4) A pupil who is enrolled part-time in more than 1 district on the count day shall be counted in membership pursuant to R 340.7.

(5) A pupil who is enrolled in more than 1 district with a full-time schedule in each district and is in attendance in more than 1 such district on the count day shall be counted in membership in each district on a pro rata basis based upon the time of attendance in each district on the count day.

(6) A part-time pupil who is enrolled in a class that is part of a series of classes, but who is enrolled in less than the full series of classes, such as a pupil enrolled in 1 class in a series of 3 6-week classes, shall be counted for the class on a pro rata basis. The calculation of the full-time equivalency for that class shall be equal to the number of hours for which the class is scheduled divided by the number of hours for which a full-time equated pupil is scheduled.

~~(3)~~ (7) The membership of a pupil who is regularly enrolled in the public schools while in attendance at religious instruction classes for not more than 2 class hours per week, off public school property during school hours upon written request of the parent, guardian, or person in loco parentis, is not affected by such released time.

~~(4)~~ **(8) A foreign student or a foreign exchange student residing in the district is eligible to may be counted in membership as provided by these rules. A foreign student or foreign exchange student residing in the district who has met the age requirements and has not obtained a high school diploma pursuant to section 6(4) of 1979 PA 94, MCL 388.1606(4) may be counted in membership.**

~~(5) A full time special education pupil attending an approved special education program administered by an intermediate school district shall be counted in membership in the intermediate district.~~

~~(6) A pupil who has not obtained a high school diploma, but who has enrolled in classes in college, is eligible to be counted in membership as provided by these rules only if the district has paid the full amount of tuition and other instructional costs for the course work for which high school credit is given.~~

(9) A pupil whose residence is within the boundaries of the school district or whose residence for educational purposes is prescribed by law to be within the school district may be counted in membership. A pupil who is 18 years of age or older may establish his or her own residence for educational purposes.

(10) A pupil whose residence is in another school district, if the enrolling district has the approval of the resident district to count the pupil in membership or the pupil meets 1 of the conditions under section 6(4) or section 6(6) of 1979 PA 94, MCL 388.1606(4) or 388.1606(6), may be counted in membership.

(11) A homebound or hospitalized pupil receiving instruction as a result of a medical condition under section 109 of 1979 PA 94, MCL 388.1709, from either the district the pupil is enrolled in or the intermediate school district in a non-special education homebound program may be counted in membership if both of the following provisions are satisfied:

(a) A minimum of 2 45-minute periods of individualized instruction per week are given.

(b) The instruction is provided by a certificated teacher in a 1-to-1 environment.

(12) An eligible special education pupil who is receiving homebound instruction from either the district in which the pupil is enrolled or the intermediate school district pursuant to R 340.1746 may be counted in membership.

(13) A pupil receiving home-based instruction (in the pupil's home or otherwise apart from the general school population) as a result of a mandatory suspension or expulsion under sections 1311(2) or 1311a of 1976 PA 451, MCL 380.1311(2) or MCL 380.1311a, from either the district in which the pupil is enrolled or the intermediate school district, may be counted as a full-time equated pupil in membership if all of the following are met:

(a) A minimum of 2 nonconsecutive hours of individualized instruction is given per week under the supervision of a certificated teacher.

(b) The instruction is provided by a certificated teacher in a 1-to-1 environment.

(c) Instructional materials, resources, and supplies, except computers, are comparable to those provided in the district's alternative education program.

(d) Course content is comparable to that of the alternative education program.

(e) Credit earned is awarded to the pupil and placed on the pupil's transcript.

(f) Virtual learning or online learning may be used to supplement the pupil instructional time requirement. The district shall comply with the virtual learning requirements under R 340.11. The teacher shall be in weekly contact with the pupil to assess the pupil's progress.

(g) Postsecondary dual enrollment may be used to supplement the pupil instructional time requirement of subrule (13)(a) of this rule.

(14) A pupil receiving instruction in an alternative education program or strict discipline academy as a result of a mandatory suspension or expulsion under sections 1311(2) or 1311a of 1976 PA 451, MCL 380.1311(2) or MCL 380.1311a, from either the district in which the pupil is enrolled or the intermediate school district, may be counted in membership.

(15) A pupil receiving home-based instruction (in the pupil's home or otherwise apart from the general school population) as a result of disciplinary action that is not a mandatory suspension or expulsion under section 1311(2) or 1311a of 1976 PA 451, MCL 380.1311(2) and MCL 380.1311a, from either the district the pupil is enrolled or the intermediate school district, may be counted in membership on a pro rata basis pursuant to section 6(4)(u) of 1979 PA 94, MCL 388.1606(4)(u) if all of the following are met:

(a) A minimum of 2 nonconsecutive hours of pupil instruction is given per week under the supervision of a certificated teacher.

(b) Instructional materials, resources, and supplies, except computers, are comparable to those provided in the district's alternative education program.

(c) Course content is comparable to that of the alternative education program.

(d) Credit earned is awarded to the pupil and placed on the pupil's transcript.

(e) Virtual learning or online learning may be used to supplement the pupil instructional time requirement. The district shall comply with the virtual learning requirements under R 340.11. The teacher shall be in weekly contact with the pupil to assess the pupil's progress.

(f) Postsecondary dual enrollment may be used to supplement the pupil instructional time requirement in subrule (15)(a) of this rule and may be used in the calculation of a pupil's full-time equated membership.

(16) A pupil whose parents live on land in this state over which the federal government has exclusive jurisdiction may be included in membership in the school district which the pupil attends and shall be counted as a tuition pupil. However, if the land has been attached to a school district as prescribed by law, then the pupil is a resident of the district entitled to all the educational rights and privileges of other resident children.

(17) A pupil placed in a state institution by the pupil's parent or legal guardian shall be counted in membership as a resident of the educating school district or intermediate school district.

(18) A student with a disability, as defined in R 340.1702 to R 340.1717, who is enrolled in regular daily attendance and who is receiving instruction in a school district or intermediate school district operating a special education program approved by the department of education, may be counted in membership.

(19) A nonpublic or home school pupil may enroll in nonessential elective courses in grades 1 to 12 in a district and be counted for the purposes of membership on a pro-rata basis pursuant to section 166b of 1979 PA 94, MCL 388.1766b. All of the following apply:

(a) Nonessential elective courses include, but are not limited to, band, art, music, drama, computer technology, life skills, career and technical education, physical education, driver's education and advanced placement level courses. A district shall not enroll a nonpublic or home school pupil in essential courses.

(b) Essential courses include, but are not limited to mathematics, reading, English, social studies, science, writing, the constitution of the United States, the constitution of the state of Michigan, and the history and present form of civil government of the United States, the state of Michigan, and the political subdivisions and municipalities of the state of Michigan.

(c) For membership purposes, a nonpublic or home school pupil may enroll in a special education resource and categorical program classroom that provides support and not core curriculum.

R 340.3 Pupils not to be counted in membership.

Rule 3. Pupils not to be counted in membership on the count date include all of the following:

~~(a) A pupil who is absent on the count date and who does not attend classes during the 10 consecutive school days immediately following the count date, except for a pupil whose absence for illness or other reason has been excused by the school district. However, a pupil who is excused from attendance on the count date, who is excused from classes during the 10 consecutive school days immediately following the count date, and who fails to appear within 30 calendar days after the count date shall not be counted.~~

~~(b) (a) A pupil who moves out of the district on or before the count date unless otherwise provided by statute or these rules.~~

~~–(c) A pupil who is less than 20 years of age on September 1 of the school year, who has obtained a high school diploma, and who is attending a course offered directly or indirectly by a district in which postsecondary credit is to be awarded by a postsecondary institution for that course.~~

~~(d) (b) A pupil who is a resident of another school district or resident of another state or foreign country unless otherwise provided by statute or these rules.~~

~~–(e) A pupil who is 16 years of age or older and who is enrolled in an alternative high school program specified under section 108(2) of Act No. 94 of the Public Acts of 1979, as amended, being S388.1708(2) of the Michigan Compiled Laws, where any segment of such a program is provided exclusively to residents of a district or districts not receiving an allocation under section 21 of Act No. 94 of the Public Acts of 1979, as amended, being S388.1621 of the Michigan Compiled Laws.~~

~~(f) (c) All others who do not meet the requirements of these rules.~~

R 340.4 ~~Pupil age requirements for membership.~~ **Schools of choice.**

Rule 4. ~~Age requirements apply to a pupil in regular attendance in a school district, who may be counted in membership as follows:~~

~~–(a) A pupil who is not less than 5 years of age on or before December 1 of the school year of enrollment and less than 20 years of age on September 1 of the school year except as otherwise provided.~~

~~–(b) A pupil, regardless of age, who is regularly enrolled and working toward a high school diploma.~~

~~–(c) A pupil who is under 20 years of age on September 1 of the school year, who has received a high school diploma, and who is enrolled in academic or vocational technical courses normally credited toward high school completion unless postsecondary credit for that course is awarded.~~

~~–(d) A pupil who is enrolled and receiving instruction in a special education program approved by the department of education, who is under 26 years of age as of September 1 of the current year, and who does not have a high school diploma.~~

(1) A nonresident pupil who is enrolled on the count date pursuant to sections 105 or 105c of 1979 PA 94, MCL 388.1705 or MCL 388.1705c may be counted in membership.

(2) For the district to enroll and count a nonresident pupil who is eligible for special education programs and services in membership pursuant to section 105c of 1979 PA 94, MCL 388.1705c, the district shall have a written agreement pursuant to section 105c(19) of 1979 PA 94, MCL 388.1705c(19).

(3) A pupil who becomes eligible for special education programs and services after the pupil has been enrolled and attending a nonresident district pursuant to section 105c of 1979 PA 94, MCL 388.1705c may be counted in membership if the district obtains a written agreement pursuant to section 105c(19) of 1979 PA 94, MCL 388.1705c(19). If a written agreement cannot be obtained, then the pupil shall not be counted in membership beginning on the next count date following the determination of eligibility for special education.

R 340.5 ~~Full-time pupils.~~ **Rescinded.**

~~Rule 5. (1) Pupils enrolled in regular daily attendance in the school district and receiving a full course of instruction and the clock hours prescribed in R 340.10(4) and (5) for their appropriate grades on count dates who may be counted in full-time membership include all of the following:~~

~~(a) A pupil whose residence (home of parents, guardians, or other persons standing in place of the parents) is within the boundaries of the school district or whose residence for educational purposes is prescribed by law to be within the school district. A pupil who is 18 years of age or older may establish his or her own residence for educational purposes.~~

~~(b) A pupil whose residence (home of parents, guardians, or other persons standing in place of the parents) is in another school district, if tuition is charged and collected.~~

~~(c) A pupil earning credit toward a high school diploma in an approved work-study program which involves supervision of work and related school instruction.~~

~~(d) A homebound pupil receiving instruction on the count date from either the district of residence or the intermediate school district in a non-special education homebound program if both of the following provisions are satisfied:~~

~~(i) A minimum of 2 45-minute periods of instruction per week are given.~~

~~(ii) The teacher giving instruction possesses a valid Michigan teaching certificate.~~

~~(e) A kindergarten pupil in regular daily attendance unless the district adopts a pilot alternative scheduling program for pupils in kindergarten as provided by section 101(4) of Act No. 94 of the Public Acts of 1979, as amended, being S388.1701(4) of the Michigan Compiled Laws.~~

~~(f) A pupil temporarily and unavoidably attending school less than a full day and receiving credit toward a high school diploma, such as a pupil convalescing from illness, recuperating from physical injury, or temporarily and seriously needed in the home.~~

~~(g) A pupil whose parents live on land in this state over which the federal government has exclusive jurisdiction may be included in membership in the school district which the pupil attends and shall be counted as a tuition pupil. However, if the land has been attached to a school district as prescribed by law, such pupil shall be a resident of the district entitled to all the educational rights and privileges of other resident children.~~

~~(h) A pupil residing in a juvenile or detention home operated by a probate court and attending school by direction of the court in the school district of residence of the pupil's parent or legal guardian shall not be counted as a tuition pupil, but shall be counted in resident membership in that school district.~~

~~(i) A pupil placed in a state institution by the pupil's parent or legal guardian shall be counted in resident membership of the school district in which the pupil is enrolled.~~

~~(j) A handicapped person, as defined in R 340.1702 to R 340.1715, who is enrolled in regular daily attendance and who is receiving instruction in a school district or intermediate school district operating a special education program approved by the department of education.~~

~~(2) A pupil who is residing in the home of a parent or legal guardian, but who, by assignment of a probate court, attends school in another school district which is operated for juveniles under court jurisdiction, shall not be counted as a tuition pupil but shall be counted in resident membership in the school district in which the pupil attends.~~

R 340.6 Part-time pupils. Rescinded.

~~Rule 6. A resident or nonresident pupil enrolled in a school district on the count dates, attending classes which comprise less than a full course of instruction for a full-time pupil and earning credit toward a high school diploma, may be counted in part-time membership. The following pupils are included:~~

~~(a) A postgraduate pupil who has received a high school diploma and who returns to high school to take additional work for credit.~~

- ~~–(b) A nonpublic school pupil enrolled in a nonpublic school and also enrolled in and attending the public school on a part-time basis.~~
- ~~–(c) A pupil enrolled in the school district and attending regular day or evening school classes.~~
- ~~–(d) A pupil enrolled in the school district in apprentice or on-the-job training programs approved by the state board of education. A minimum of 4 clock hours of supervised instruction per week shall be provided each apprentice or on-the-job training pupil.~~
- ~~–(e) A pupil enrolled in a practical nursing program approved by the board of nursing and the state board of education.~~
- ~~–(f) A pupil enrolled in the school district and attending adult basic education or adult school programs leading to graduation from high school.~~

R 340.7 Computation of ~~part-time~~ membership.

Rule 7. **(1) The computation of a full-time equivalency shall comply with sections 6(4), 6(8), 51a, 101, 109, 163a and 166b of 1979 PA 94, MCL 388.1606(4), MCL 388.1606(8), MCL 388.1651a, MCL 388.1701, MCL 388.1709, MCL 388.1763a and MCL 388.1766b.**

~~(1) (2) A part-time pupil in membership on the count dates is counted in membership in the amount computed on the pro rata bases basis provided in statute or this these rules. An adult part-time pupil who is 18 years of age or older as of September 1 of the school year is not required to receive instruction on each of the minimum 180 days of school. A part-time pupil in membership shall not be counted as more than a full-time pupil in membership. Only scheduled pupil-teacher contact time can be counted as hours of student instruction, except for on-the-job training, where the pupil shall be enrolled in a class directly related to the district-supervised, on-the-job training experience. The district-supervised, on-the-job training experience shall not be counted for state aid membership in excess of the number of hours in the related class up to a maximum of 120 hours. The pupil's regular employment shall not be considered for the on-the-job training experience and counted for membership.~~

~~–(2) The prorated membership for a part-time pupil who is under 18 years of age as of September 1 of the school year and who is taking instruction in grades 1–12 is computed by applying a ratio which is the relation between the number of clock hours per year scheduled in classes for which credit may be earned in a public school and 900 clock hours per year.~~

~~–(3) The prorated membership for a pupil who is 18 years of age or older on September 1 of the school year and who is taking instruction in adult basic education or adult high school completion programs in grades 1–12 is computed by applying a ratio which is the relation between the number of clock hours of student instruction scheduled and 480 clock hours of instruction for the school year. Elective subjects which pupils have completed successfully in adult high school completion programs shall not be repeated and claimed for membership. Electives taken shall not exceed the total number of electives prescribed in a pupil's planned program.~~

~~–(4) The prorated membership for a postgraduate pupil taking academic or vocational technical courses that would normally be credited toward high school completion is computed by applying a ratio which is the relation between the number of clock hours of student instruction scheduled and 480 hours of instruction for the school year.~~

~~–(5) The prorated membership of homebound pupils enrolled in an adult education program under section 108 of Act No. 94 of the Public Acts of 1979, as amended, being §388.1708 of the Michigan Compiled Laws, is computed by applying a ratio which is the relation between the number of clock hours of student instruction scheduled and 480 clock hours of instruction for the school year.~~

~~–(6) The prorated membership for a pupil in an apprentice or on-the-job training program is computed by allowing 2/5 membership for each pupil enrolled in the program.~~

~~-(7) The prorated membership for a pupil in a practical nursing program is computed by allowing 1/2 membership for each pupil enrolled in such program.~~

(8) (3) Except as provided in subrule (2) of this rule, A a pupil enrolled in and attending classes in more than 1 school district on the count day shall be counted as a part-time member by each school district, but the total of the part time memberships shall count for not more than 1 full membership. The part-time membership shall be equal to the number of hours scheduled and enrolled in each district divided by the total number of hours scheduled and enrolled in all districts. However, if the total number of hours scheduled and enrolled in all districts is less than the number of hours specified in section 101(3) of 1979 PA 94, MCL 388.1701(3), the part-time memberships shall be equal to the number of hours scheduled and enrolled in each district divided by the number of hours specified in section 101(3) of 1979 PA 94, MCL 388.1701(3).

(4) For a pupil receiving instruction in both a public school academy and in a district or intermediate district, the membership shall be calculated pursuant to section 6(4) of 1979 PA 94, MCL 388.1606(4).

~~-(9) A preprimary aged special education pupil not enrolled in kindergarten shall be counted in membership based on the number of days scheduled per week. Membership shall be computed by allowing 1/5 membership for each day scheduled. A pupil scheduled for all 5 days shall count as 1 full membership.~~

~~-(10) Students enrolled in high school completion independent study classes may be counted for only the actual teacher student contact hours prescribed in the student's schedule.~~

(5) A pupil shall attend each of the classes in which the pupil is enrolled on the pupil membership count dates in order to have that class time used in the calculation of the pupil's full-time equivalency pursuant to section 6(8) of 1979 PA 94, MCL 388.1606(8). To calculate full-time equivalency, attendance shall be taken on a class-by-class basis for a high school pupil or for any other pupil who passes from class to class individually, not as an entire class. In addition, pupils enrolled in a program with a block schedule shall be accounted for on a class-by-class basis. For classes on a pupil's schedule not scheduled on the count date, attendance is required on the day immediately following the count date on which the classes are scheduled.

(6) A pupil with an excused absence on the count date who attends each class within 30 calendar days shall have that class time used in the calculation of the pupil's full-time equivalency. A pupil with an unexcused absence who was in attendance prior to the count date and attends each class within 10 school days shall have that class time used in the calculation of the pupil's full-time equivalency. A pupil who was suspended or expelled who was in attendance prior to the count date and attends class within 45 calendar days shall have that class time used in the calculation of the pupil's full-time equivalency.

(7) An eligible pupil enrolled and attending an eligible postsecondary institution pursuant to 1996 PA 160, MCL 388.511 to MCL 388.524 or 2000 PA 258, MCL 388.1901 to MCL 388.1913 shall comply with the requirements of R 340.17 and R 388.151 to R 388.155. The pupil may be considered a full-time equated pupil if 1 of the following is met:

(a) The combined number of classes that the pupil is enrolled in and attending at the high school and at an eligible postsecondary institution equals the number of scheduled classes per day at the high school necessary to reach the minimum required hours for a full-time pupil. Actual hours of instruction do not need to be computed.

(b) The combined number of classes that the pupil is enrolled in and attending at the high school and at an eligible postsecondary institution equals the number of scheduled classes per day at the high school necessary to meet the minimum instructional time requirements of a reduced schedule. Actual hours of instruction do not need to be computed.

(c) The sum of the actual instruction hours a pupil is enrolled in at the high school and at an eligible postsecondary institution and the number of hours of travel time meet the minimum number of hours required to meet a reduced schedule.

R 340.10 ~~Student instruction days~~ Pupil instructional time.

Rule 10. (1) To qualify for state aid without penalty ~~in accordance with Act No. 94 of the Public Acts of 1979, as amended, being S388.1601 et seq. of the Michigan Compiled Laws, a school district shall have a minimum~~ **provide at least the number of hours of pupil instruction** ~~of 180 days of student instruction in each school year as required under section 101 of 1979 PA 94, MCL 388.1701.~~

(2) A district may count time toward the minimum pupil instructional hour requirement in a particular building, program, or grade level, without penalty, if all of the following are met:

(a) Pupils and certificated teacher or teachers are present and engaged in instruction.

(b) Instruction is scheduled and available for the entire pupil membership in a particular building, program, or grade level.

(c) The course generates credit toward the pupil's high school diploma or grade progression. Subrules 3(b) to 3(h) of this rule are exempt from this requirement. In addition, a pupil enrolled in and attending a high school and a postsecondary institution who elects not to earn high school credit for the postsecondary course is exempt from this requirement.

(3) A district may also count time toward the minimum pupil instructional hour requirement in a particular building, program, or grade level, without penalty, for any of the following:

(a) Instructional time that is part of a junior reserve officer training corps (JROTC) program in grades 7 to 12 pursuant to section 101(7) of 1979 PA 94, MCL 388.1701(7).

(b) A non-subject course such as seminar, achievement hour, or focused instructional time that is academic in nature and includes activities such as tutoring, mentoring, or advising, with a pupil to teacher ratio that is within the range of the regular academic courses for the building, but not greater than 35 pupils to 1 teacher.

(c) A homeroom that is not a study hall if it is not more than 15 minutes in length, including passing time.

(d) Not more than 2 study hall periods if supervised by a certificated teacher and the district provides at least 90 additional hours of pupil instruction than the number of hours of pupil instruction required under section 101 of 1979 PA 94, MCL 388.1701.

(e) A maximum of 30 minutes per day of passing time between class periods unless the building administrator demonstrates the need for additional passage time. Passing time to the first class period and from the last class period shall not be counted. Only 1 passing time to or from lunch may be counted.

(f) The breakfast period and lunch period shall not be counted.

(g) Recess of a reasonable duration may be counted if supervised by a certificated teacher. Passing time to or from the bus at the beginning or end of the school day shall not be counted. The total number of minutes of recess that may be counted if supervised by a certificated teacher shall not exceed 30 minutes each school day.

(h) Travel time may be counted pursuant to R 340.10a.

(4) A pupil who has completed graduation requirements shall be deemed to have complied with this rule for the hours of instruction scheduled after completing the graduation requirements for the school year in which the graduation requirements are met.

~~(2) A district maintaining school during the entire year shall have a minimum of 240 days of student instruction in each school year. The school year shall be divided into equal quarters of 60 days of student instruction, which shall be provided in each of the following calendar periods:~~

~~-(a) First quarter, July 1 through September 30.~~

~~-(b) Second quarter, October 1 through December 31.~~

~~-(c) Third quarter, January 1 through March 31.~~

~~-(d) Fourth quarter, April 1 through June 30.~~

~~-(3) A day of student instruction is a day when pupils and certificated teachers are present and instruction is scheduled for the entire pupil membership of a school district other than adult part time pupils and provided to not less than 70% of the total pupil membership other than adult part time pupils, as of the appropriate fourth Friday count, except that a school district may elect to apply these same requirements on a building or grade basis to achieve schedule requirements if a minimum 180 days of student instruction is scheduled and provided. A school district's calendar shall be extended for each scheduled day not counted to provide a minimum 180 days of student instruction for elementary and secondary pupils. A day during which student registration, orientation, or the arrangement of student class schedules occupies the student's time for ½ of the day shall not be counted as a day of student instruction.~~

~~-(4) Pupils attending kindergarten shall be provided a minimum of 180 days of student instruction, unless the district adopts a pilot alternative scheduling program for pupils in kindergarten as provided by section 101(6) of Act No. 94 of the Public Acts of 1979, as amended, being S388.1701(6) of the Michigan Compiled Laws. The minimum number of clock hours of student instruction for pupils attending kindergarten shall be 450 for the regular school year.~~

~~-(5) Full-time pupils attending grades 1-12 shall be provided a minimum of 180 days of student instruction. The minimum number of clock hours of student instruction for pupils in grades 1-12 shall be 900 for the regular school year, including time required to pass to and from classes, but excluding lunchtime and study halls, or 990 for the regular school year, including time required to pass to and from classes and not more than 2 study halls each day, but excluding lunchtime. A pupil who has completed graduation requirements shall be deemed to have complied with this rule for each day after completing the graduation requirements for the school year in which the graduation requirements are met. A local school district may provide less than the prescribed number of hours of student instruction for an individual pupil attending the senior high school when the school district determines that the educational needs of the pupil are best served by a reduced schedule and may count such pupil as a full-time pupil in membership if the pupil is taking a minimum of 705 hours of student instruction for the school year.~~

~~-(6) An emergency in a school district means either the existence of extreme financial conditions due to insufficient operating funds or a severe classroom shortage that results in the inability of a school district to comply with subrule (4) or (5) of this rule. The board of education of a school district claiming the existence of an emergency shall request, in writing, state board of education approval to provide student instruction for less than the prescribed number of hours for a particular school year. In its application, the school district shall demonstrate a need for a schedule of student instruction of less than the prescribed number of hours for elementary or secondary pupils, or both, and shall include a comprehensive statement as to all of the following:~~

~~-(a) The prevailing conditions requiring the reduced time schedule.~~

~~-(b) The proposed schedule to be followed.~~

~~-(c) The period during such school year in which the reduced schedule shall be in effect.~~

~~-(d) The program to be undertaken by the district to alleviate the emergency. The application for a reduced schedule shall be filed by the school district not later than July 1 of the particular school year. The state board of education may extend the filing date for good cause. If the state board of education finds that an emergency exists in a school district for such school year necessitating a reduced schedule of student instruction, the state board of education may approve or modify and approve the reduced schedule of student instruction in the district for such school year. A school district shall not operate on a reduced schedule without prior approval by the state board of education.~~

~~–(7) A school district may request state board of education approval to offer a year-round program or some other type of experimental program which utilizes a different scheduling arrangement, but which provides each student an equivalent number of hours by the end of the academic school year, as provided under subrule (4) or (5) of this rule.~~

R 340.10a Travel time; instructional time.

Rule 10a. (1) A pupil in grades 9 to 12 or a special education pupil who is enrolled in a cooperative education program and cannot meet the minimum required hours of pupil instruction due to the actual travel time between the two educating districts' instructional sites may count up to 3 hours of travel time per week toward the minimum required hours.

(2) A district that can document that the actual travel time between the instructional sites for a pupil in subrule (1) of this rule exceeds 3 hours per week may apply to the department for a waiver to count additional travel time toward the minimum required hours of pupil instruction.

(3) A pupil whose actual instructional time plus the actual travel time does not equal the minimum hours of pupil instruction required for a full-time equated membership is ineligible to count any travel time.

(4) A pupil who is also enrolled in a postsecondary institution shall not be considered to be less than a full-time pupil if the actual travel time between the secondary institution and the educating district is the sole reason the pupil cannot enroll in the number of courses necessary to be a full-time equated membership.

R 340.11 ~~Days not in session; when counted.~~ Virtual learning, online learning or computer courses; distance learning; postsecondary dual enrollment virtual learning; self-scheduled virtual learning.

~~Rule 11. The first 2 days when pupil instruction is not provided because of conditions not within the control of school authorities, such as severe storms, fires, epidemics, or health conditions as defined by the city, county, or state health authorities, shall be counted as days of pupil instruction. Subsequent days shall not be counted as days of pupil instruction.~~

(1) Virtual learning or online learning is a nontraditional method of receiving pupil instruction for courses that are taken through online learning or otherwise on a computer or other technology. Virtual learning may be offered at the district during the day as a scheduled class period or through distance learning, enrollment at a community college or university, or self-scheduled virtual learning.

(2) Virtual learning, online learning or computer courses provided during the school day as part of the pupil's class schedule shall meet the following requirements to count these pupils in membership:

(a) The pupil shall meet pupil membership eligibility requirements pursuant to section 6(4) of 1979 PA 94, MCL 388.1606(4).

(b) The course shall be approved by the board of education of a school district or board of directors of a public school academy.

(c) The course shall generate credit toward the pupil's high school diploma or grade progression.

(d) The pupil is in attendance in the building and in regular daily attendance.

(e) There is no limit on the number of computer or internet courses that can be counted in membership for the pupil.

(f) A certificated teacher of record shall be in the classroom.

(g) The course shall be counted in the same manner as any other in-school course.

(3) Distance learning is provided via 2-way communication between the teacher of record and a group of pupils over a computer or television monitor, even though the teacher is physically remotely located from the pupils. The following requirements shall be met to count these pupils in membership:

(a) The pupil shall meet pupil membership eligibility requirements pursuant to section 6(4) of 1979 PA 94, MCL 388.1606(4).

(b) The course shall be approved by the board of education of a school district or board of directors of a public school academy.

(c) The course shall generate credit toward the pupil's high school diploma or grade progression.

(d) A certificated teacher and pupil shall be assigned to the distance learning course during the regular school day and shall appear on the pupil's class schedule. An adult shall be present in the classroom. If the distance learning course is provided through a cooperative agreement with another district(s), the certificated teacher shall be an employee of a school district that is part of the cooperative agreement.

(e) There is no limit on the number of distance learning courses that can be counted in membership for the pupil.

(f) The course shall be counted in the same manner as any other in-school course.

(4) A virtual learning course taken through a community college or university pursuant to R 340.17 shall meet all of the following:

(a) The pupil shall meet membership eligibility requirements pursuant to section 6(4) of 1979 PA 94, MCL 388.1606(4).

(b) The pupil shall be concurrently enrolled and attending at least 1 course offered by the district in which credit is earned and regular attendance is required.

(c) There is no limit on the number of virtual learning courses taken through a community college or university that can be counted in membership for the pupil.

(5) A self-scheduled virtual learning course taken at a pupil's self-scheduled time and place with no regular daily attendance shall meet all of the following:

(a) The pupil shall meet membership eligibility requirements pursuant to section 388.6(4) of 1979 PA 94, MCL 388.1606(4).

(b) The pupil shall be concurrently enrolled and attending on the pupil membership count day or the supplemental count day pursuant to section 6(8) of 1979 PA 94, MCL 388.1606(8) during the class time designated for the course on the pupil's class schedule.

(c) The course shall be approved by the board of education of a school district or board of directors of a public school academy.

(d) The course shall generate credit toward the pupil's high school diploma or grade progression.

(e) The teacher of record shall be identified.

(f) An on-site mentor shall be assigned to the pupil who shall be available for assistance and to monitor the pupil's progress. The on-site mentor shall be a certificated teacher employed by the school district.

(g) Each course shall count as 1 course on the pupil's class schedule and shall generate that portion of a full-time equivalency membership that a comparable course offered by the district would generate.

(h) The district shall pay any associated tuition charges for the course(s) similar to the tuition requirement for postsecondary dual enrollment pursuant to section 21b of 1979 PA 94, MCL 388.1621b.

- (i) Not more than 2 of these courses may be used in the computation of a full-time equivalency.
- (j) The district may adopt additional requirements for pupils enrolled in these courses.

R 340.12 ~~Days not in session; when not counted.~~ Independent study.

~~Rule 12. Days not in session because of strikes or teacher conferences shall not be counted as days of student instruction. Days not in session, such as the following, shall not be counted as days of student instruction:~~

- ~~-(a) County or state teacher institute days.~~
- ~~-(b) Business industry education days.~~
- ~~-(c) Teacher workshop days.~~
- ~~-(d) County fair or 4-H days.~~
- ~~-(e) Days devoted to checking or issuing of records.~~
- ~~-(f) Legal holidays.~~
- ~~-(g) Good Friday and the Friday immediately following Thanksgiving day.~~

(1) Independent study is a learning experience that is academic in nature that allows a pupil an opportunity for self-directed learning. The following requirements shall be met to count these pupils in membership:

(a) The pupil shall meet membership eligibility requirements pursuant to section 6(4) of 1979 PA 94, MCL 388.1606(4).

(b) The pupil is enrolled in grades 9 to 12.

(c) The pupil shall be concurrently enrolled and attending on the pupil membership count day or the supplemental count day pursuant to section 6(8) of 1979 PA 94, MCL 388.1606(8) during the class time designated for the course on the pupil's class schedule.

(d) The course shall be approved by the board of education of a school district or board of directors of a public school academy.

(e) The course shall generate credit toward the pupil's high school diploma or grade progression.

(f) An on-site mentor shall be assigned to the pupil who shall be available for assistance and to monitor the pupil's progress. The on-site mentor shall be a certificated teacher employed by the school district.

(g) Each course shall count as 1 course on the pupil's class schedule and shall generate that portion of a full-time-equivalency membership that a comparable course offered by the district would generate.

(h) Not more than 2 of these courses may be used in the computation of a full-time equivalency.

(i) The district may adopt additional requirements for pupils enrolled in these courses. In addition, a district may choose not to offer these courses or to place greater restrictions on the pupils, or on the courses offered.

(2) Independent study shall not include in-district placement under R 340.14(3).

R 340.13 ~~Rescinded~~ Learning labs.

Rule 13. (1) A learning lab is 1 method a district may use to deliver academic instruction to pupils. The teacher may provide instruction in more than 1 subject during the class period. Multiple levels of a subject may be taught in the same class period. The following requirements shall be met to count these pupils in membership:

(a) If the learning lab is the only means of providing instruction to an entire group of pupils such as an alternative education program, then that learning lab shall meet the minimum required hours of pupil instruction or obtain a department approved waiver to operate fewer than the

minimum required hours of pupil instruction pursuant to section 101 of 1979 PA 94, MCL 388.1701.

(b) The course shall be approved by the board of education of a school district or the board of directors of a public school academy.

(c) The course shall generate credit toward the pupil's high school diploma or grade progression.

(d) A certificated teacher shall be scheduled for and present in the learning lab.

(e) Attendance shall be taken by the pupil signing in and signing out of the learning lab. The certificated teacher scheduled for those hours shall sign a printed attendance sheet during the count period.

(f) The learning lab shall be part of the pupil's class schedule for a specified time slot. A pupil shall not generate a greater portion toward 1.0 full-time equivalency for each course than would be generated in a normal class setting.

(g) The pupil shall attend all scheduled classes or hours on the count date or during the count week. Only those hours scheduled and attended during the count week shall be used in the computation of a pupil's full-time equivalency. A pupil with an unexcused absence during the count week may be counted if the pupil attended classes prior to the count date and attended all hours scheduled in 1 week within 10 school days after the official count date. A pupil with an excused absence during the count week may be counted if the pupil attended all hours scheduled in 1 week within 30 calendar days after the official count date.

R 340.14 ~~Rescinded~~ Experiential learning courses.

Rule 14. (1) A pupil enrolled in an "experiential learning course" may be counted in membership if all of the following are met:

(a) The pupil is enrolled in grades 9 to 12.

(b) The course is taught by a certificated teacher.

(c) The primary responsibility of the certificated teacher of the course is teaching the pupil(s) during the course time frame. The certificated teacher shall not be concurrently teaching another course.

(d) The pupil is given a grade and credit based on assessment.

(e) Attendance is taken and documented.

(f) The course with identified content standards and expectations is approved by the board of education of a school district or board of directors of a public school academy. In addition, the board of education shall approve learning objectives that relate to the board approved curriculum and course, outlining content standards and expectations, and shall be progressive in nature. The learning objectives shall not be limited to general employability skills, such as punctuality and developing good work habits.

(g) The course is not used solely as the 1 course requirement for eligibility to participate in postsecondary dual enrollment.

(h) The pupil is limited to 1 experiential learning course per semester.

(i) The pupil shall not replace a regular employee.

(j) The course is a combination of instruction and direct experience.

(2) Experiential learning courses that may be counted in membership include, but are not limited to, the following:

(a) A library assistant course that is curriculum based and approved by the board of education of a school district or board of directors of a public school academy. Pupils receive a syllabus, are given tests and quizzes, and the course is graded, rather than pass or fail.

(b) A teacher assistant course that is curriculum based and approved by the board of education of a school district or board of directors of a public school academy in which a pupil learns teaching techniques and how to tutor or mentor other students. Pupils receive a syllabus, are given tests and quizzes, and the course is graded, rather than pass or fail.

(c) A physical education teacher assistant course that is curriculum based and approved by the board of education of a school district or board of directors of a public school academy. Pupils receive a syllabus, are given tests and quizzes, and the course is graded, rather than pass or fail.

(3) Experiential learning courses that shall not be counted in membership include, but are not limited to, the following:

(a) The pupil is enrolled in grades other than 9 to 12.

(b) A teacher's aide that is assigned to perform basic tasks such as photocopying, delivering and retrieving messages, taking attendance, or running errands.

(c) A janitor aide that is assigned to perform basic tasks, such as emptying trash or other errands.

(d) A cafeteria aide that is assigned to perform basic tasks, such as washing tables or other errands.

(e) An office aide.

(f) A nurse's aide.

(4) An in-district placement under R 340.15 or R 340.16 is not an experiential learning course.

(5) A pupil receiving special education services may participate, as appropriate, in an experiential learning course designed for general education pupils. The pupil shall meet all the requirements of this rule.

R 340.15 ~~Rescinded~~ Work-based learning experiences.

Rule 15. (1) A “work-based learning experience” means a learning experience that is coordinated by a district through a training agreement with an employer providing a paid or unpaid educational experience relating to school instruction that may be offered as part of the pupil's schedule. This experience is not part of a work-based learning experience related to a state-approved career and technical education program under R 340.16. A pupil who participates in a paid or unpaid work-based learning experience may be counted in membership if all of the following are met:

(a) The pupil is enrolled in grades 9 to 12.

(b) The experience is monitored by a designated certificated teacher.

(c) The pupil is eligible to receive credit towards a high school diploma for the work-based learning experience.

(d) Federal and state regulations regarding the employment of minors shall be followed.

(e) The work-based learning experience shall not generate more than ½ of the pupil's total full-time equivalency.

(f) The employment of the pupil shall not exceed the maximum hours set by the district.

(g) The district shall have a written training agreement in place by the pupil membership count date. The training agreement shall include all of the following:

(i) Pupil's personal information including name, home address, telephone number(s), birth date, and emergency contact information.

(ii) School's name, address, telephone number, and contact person.

(iii) Employer's name, address, telephone number, and contact person.

(iv) A list of employer, school, and pupil responsibilities.

(v) Beginning and ending dates of the agreement.

- (vi) The daily hours to be worked that include beginning and ending times.
 - (vii) Beginning rate of pay, if work-based learning experience is paid.
 - (viii) Verification of appropriate safety instruction provided by the school district or the employer may also be included in the training plan defined in subrule (1)(h) of this rule.
 - (ix) Verification that employer has worker's disability compensation and general liability insurance.
 - (x) The signatures of the principal or his or her designee, certificated teacher or coordinator, pupil, parent or legal guardian, and training station supervisor (employer). If the training agreement and training plan are combined into 1 document, only 1 set of signatures is required.
 - (xi) Statement of assurance signed by the employer that pupils will not be discriminated against on the basis of race, color, religion, national origin, sex, age, or disability.
 - (xii) A district statement of assurance of compliance with federal laws relating to discrimination.
- (h) The district shall have a written training plan in place by the pupil membership count date. The training plan shall include all of the following:
- (i) Verification by the certificated teacher that the pupil's career or education goals as outlined in the pupil's education development plan relate to this placement.
 - (ii) A list of performance elements or job skills that contribute to the pupil's progress toward a career objective. The performance elements or job skills shall be used to assess the pupil's progress.
 - (iii) Identification of academic course(s) that generate credit towards a high school diploma in which the pupil is currently or previously enrolled that relates to and prepares the pupil for job placement.
 - (iv) Signatures of the principal or his or her designee, certificated teacher or coordinator, pupil, parent or legal guardian, and training station supervisor (employer). If the training agreement and training plan are combined into 1 document, only 1 set of signatures is required.
- (i) The employer or coordinator shall maintain and verify records of the pupil's attendance throughout the duration of the training agreement.
- (j) A certificated teacher shall develop a regular visitation plan, after first visiting the employer to establish the training site, that includes at least 1 site visit every 9-week period.
- (2) In addition to the requirements for paid and unpaid work-based learning experiences for pupils, the following requirements apply to unpaid work-based learning experiences:
- (a) The training shall not be for more than a total of 45 hours per specific training experience.
 - (b) The work experience shall occur during scheduled classroom time, unless an exception is documented. For exceptions, the training plan and agreement shall reflect the alternate hours and a certificated teacher shall be available to monitor this experience during the pupil's training hours.
- (3) A pupil receiving special education services may participate, as appropriate, in a work-based learning experience designed for general education pupils. The pupil shall meet all the requirements of this rule.
- (4) A state-approved career and technical education program work-based learning experience shall comply with R 340.16.
- (5) In addition to subrules (1) to (4) of this rule, a special education work-based learning experience shall comply with R 340.1733(i) related to instruction and worksite visitation by a district employed certificated teacher.
- (6) A work-based learning experience shall not include in-district placement unless either of the following applies:

(a) It is a work-based learning experience related to a state-approved career and technical education program under R 340.16.

(b) It is directly related to the postsecondary career and employment goals and objectives in the pupil's transition services plan developed for a pupil receiving special education services.

R 340.16 Rescinded Work-based learning experiences; state-approved career and technical education programs.

Rule 16. (1) A “work-based learning experience related to a state-approved career and technical education program” means a learning experience related to a state-approved career and technical education program that is coordinated by a district through a training agreement with an employer providing an educational experience relating to school instruction that may be offered as part of the pupil's schedule. A state-approved career and technical education program is a secondary career and technical education program that is approved by the department for the purposes of determining eligibility to receive added cost funding pursuant to section 61a of 1979 PA 94, MCL 388.1661a.

(2) A pupil who participates in a paid work-based learning experience related to a state-approved career and technical education program (capstone) may generate added cost funding pursuant to section 61a of 1979 PA 94, MCL 388.1661a and may be counted in membership if all of the following are met:

(a) The pupil is enrolled in a state-approved career and technical education program in grades 11 and 12.

(b) The experience is monitored by a vocationally certificated teacher or coordinator employed by the school district.

(c) The pupil is eligible to receive credit towards a high school diploma for the work-based learning experience.

(d) The work-based learning experience shall not generate more than ½ of the pupil's total full-time equivalency, not to exceed .5.

(e) The employment of the pupil shall not exceed the maximum hours set by the district.

(f) The pupil has successfully completed 50% or more of the minimum number of minutes allowed for a state-approved career and technical education program.

(g) The pupil shall attend at least 1 40-minute session per week taught by a vocationally certificated teacher or coordinator in either of the following:

(i) The related state-approved career and technical education classroom.

(ii) A district-approved educational course, with academic objectives, related to the pupil's career and educational goals.

(h) The pupil is employed not less than an average of 10 hours per week during the effective time of the training agreement.

(i) The district shall have a written training agreement pursuant to subrule (6) of this rule.

(j) The district shall have a written training plan pursuant to subrule (7) of this rule.

(k) The district shall comply with subrules (8), (9), (10), and (11) of this rule.

(3) A pupil who participates in an unpaid work-based learning experience related to a state-approved career and technical education program may generate added cost funding pursuant to section 61a of 1979 PA 94, MCL 388.1661a and may be counted in membership if all of the following are met:

(a) The pupil is enrolled in a state-approved career and technical education program in grades 11 and 12.

(b) The experience is monitored by a vocationally certificated teacher or coordinator employed by the school district.

(c) The pupil is eligible to receive credit towards a high school diploma for the work-based learning experience.

(d) The training shall not be more than a total of 45 hours per specific training experience.

(e) The work experience shall occur during scheduled classroom time, unless an exception is documented. For exceptions, the training plan and agreement shall reflect the alternate hours and a vocationally certificated teacher or coordinator shall be available to monitor this experience during the pupil's training hours.

(f) The district shall have a written training agreement pursuant to subrule (6) of this rule.

(g) The district shall have a written training plan pursuant to subrule (7) of this rule.

(h) The district shall comply with subrules (8), (9), (10), and (11) of this rule.

(4) A pupil who participates in an in-district unpaid work-based learning experience related to a state-approved career and technical education program may generate added cost funding pursuant to section 61a of 1979 PA 94, MCL 388.1661a and may be counted in membership if all of the following are met:

(a) The pupil is enrolled in a state-approved career and technical education program in grades 11 and 12.

(b) A list of state-recognized career and technical education programs eligible for in-district placement shall be established by the department.

(c) The work-based learning experience shall not generate more than $\frac{1}{2}$ of the pupil's total full-time equivalency, not to exceed .5.

(d) The experience is monitored by a vocationally certificated teacher or coordinator employed by the school district.

(e) The pupil is eligible to receive credit towards a high school diploma for the work-based learning experience.

(f) The training shall not be for more than a total of 45 hours per specific training experience.

(g) The district shall have an in-district placement agreement by the pupil membership count date. The in-district placement agreement shall include all of the following:

(i) Pupil's personal information including name, home address, telephone number(s), birth date, and emergency contact information.

(ii) Beginning and ending dates of the placement.

(iii) The daily hours to be worked that include beginning and ending times.

(iv) A list of school and pupil responsibilities.

(v) Verification of appropriate safety instruction provided by the school district.

(vi) The signatures of the principal or his or her designee, vocationally certificated teacher or coordinator, pupil, and parent or legal guardian.

(vii) The program serial number of the related state-approved career and technical education program.

(h) The district shall have a training plan pursuant to subrule (7) of this rule.

(i) The district shall comply with subrules (8), (9), (10), and (11) of this rule.

(5) An unpaid state-approved career and technical education less-than-class-size program provides an opportunity to pupils who, because of unique circumstances, do not have a program available through a regular state-approved career and technical education program. A pupil who participates in an unpaid work-based learning experience that is a less-than-class-size program may generate added cost funding pursuant to section 61a of 1979 PA 94, MCL 388.1661a and may be counted in membership if all of the following are met:

- (a) The pupil is enrolled in grades 11 and 12.
- (b) Notification of the program is received by the department on the Friday after the pupil count date.
- (c) The experience is monitored by a vocationally certificated teacher or coordinator employed by the school district.
- (d) The pupil is eligible to receive credit towards a high school diploma for the work-based learning experience.
- (e) The program shall be established for a time period as defined in the program standards for the career and technical education program (i.e., a minimum of either 7,200 minutes or 14,400 minutes).
- (f) Instruction for pupils shall be provided by approved less-than-class-size vocationally annually-authorized personnel under the jurisdiction of the employer.
- (g) The program shall have not more than 4 pupils per vocationally annually-authorized personnel per instructional site in the same time period.
- (h) The district shall have a written training agreement pursuant to subrule (6) of this rule.
- (i) The district shall have a written training plan pursuant to subrule (7) of this rule.
- (j) The district shall comply with subrules (8), (9), (10), and (11) of this rule.
- (6) The district shall have a written training agreement in place by the pupil membership count date. The training agreement shall include all of the following:
 - (a) Pupil's personal information including name, home address, telephone number(s), birth date, and emergency contact information.
 - (b) School's name, address, telephone number and contact person.
 - (c) Employer's name, address, telephone number and contact person.
 - (d) A list of employer, school, and pupil responsibilities.
 - (e) Beginning and ending dates of the agreement.
 - (f) The daily hours to be worked that include beginning and ending times.
 - (g) Beginning rate of pay, if paid work-based learning experience.
 - (h) Verification of appropriate safety instruction provided by the school district or the employer may also be included in the training plan.
 - (i) Verification that employer has worker's disability compensation and general liability insurance.
 - (j) The signatures of the principal or his or her designee, vocationally certificated teacher or coordinator, pupil, parent or legal guardian, and training station supervisor (employer). If the training agreement and training plan are combined into 1 document, only 1 set of signatures is required.
 - (k) Statement of assurance signed by the employer that pupils will not be discriminated against on the basis of race, color, religion, national origin, sex, age or disability.
- (l) A district statement of assurance of compliance with federal laws relating to discrimination.
- (7) The district shall have a written training plan in place by the pupil membership count date. The training plan shall include all of the following:
 - (a) Verification by the vocationally certificated teacher or coordinator that the pupil's career or educational goals as outlined in the pupil's education development plan relate to this placement.
 - (b) A list of performance elements established by the department that contribute to the pupil's progress toward a career objective. The performance elements shall be used to assess the pupil's progress.
 - (b) Signatures of the principal or his or her designee, vocationally certificated teacher or coordinator, pupil, parent or legal guardian, and training station supervisor (employer). If the

training agreement and training plan are combined into 1 document, then only 1 set of signatures is required.

(8) The employer or vocationally certificated teacher or coordinator shall maintain and verify records of the pupil's attendance throughout the duration of the training agreement or in-district placement agreement.

(9) A vocationally certificated teacher or coordinator shall develop a regular visitation plan, after first visiting the employer to establish the training site, that includes at least 1 site visit every 9-week period.

(10) Federal and state regulations regarding the employment of minors shall be followed.

(11) A pupil receiving special education services may participate, as appropriate, in a work-based learning experience in a state-approved career and technical education program designed for pupils attending state-approved career and technical education programs. The pupil shall meet all the requirements of this rule.

R 340.17 ~~Rescinded~~ Postsecondary dual enrollment.

Rule 17. (1) A district shall comply with the requirements of the postsecondary dual enrollment options act of 1996 PA 160, MCL 388.511 to MCL 388.524 and the career and technical preparation act of 2000 PA 258, MCL 388.1901 to MCL 388.1913 and R 388.151 to R 388.155.

(a) The district shall pay any associated tuition charges for the course(s) for postsecondary dual enrollment pursuant to section 21b of 1979 PA 94, MCL 388.1621b.

(2) The postsecondary dual enrollment options act and the career and technical preparation act do not prohibit a district from supporting any pupil regardless of eligibility under those acts. A district may elect to support college level courses or career preparation courses for any pupil if it is in the best interest of the pupil.

R 340.18 Waiver.

Rule 18. Upon application by a district, the superintendent of public instruction may grant to the district a limited time waiver from these rules pursuant to section 380.1281 of 1976 PA 451, MCL 380.1281.

NOTICE OF PUBLIC HEARING

SOAHR 2007-062
MICHIGAN DEPARTMENT OF EDUCATION
NOTICE OF PUBLIC HEARING

The Michigan Department of Education, Bureau of School Finance and School Law will conduct a public hearing to receive public comments on the following proposed administrative rules:

School District Pupil Accounting for Distribution of State Aid (2007-062 ED)

The rules are promulgated by authority of the superintendent of public instruction by sections 1281 and 1284 of 1976 PA 451, MCL 380.1281, MCL 380.1284, sections 6, 13, and 101 of 1979 PA 94, MCL 388.1606, MCL 388.1613 and MCL 388.1701, and Executive Reorganization Orders Nos. 1996-6 and 1996-7, MCL 388.993 and 388.994. The changes would align the rules with the State School Aid Act and the Michigan Department of Education's Pupil Accounting Manual.

The proposed rules are accessible on the internet at: www.michigan.gov/mde-publiccomment. These rules are published in the March 15, 2008 *Michigan Register*. The rules are proposed to take effect on July 1, 2008.

A public hearing will be held on the proposed rules on **Wednesday, March 26, 2008**, from 2:30-4:30 p.m., at the **Library of Michigan - Forum**, 717 West Allegan Street, Lansing, Michigan 48909.

Oral or written comments may be presented in person at the hearing or submitted in writing by mail, e-mail, or facsimile no later than **5:00 p.m., March 27, 2008**. All comments will be reviewed and considered in the final version of the rules. Comments may be submitted to the following:

Public Comment
Bureau of School Finance and School Law
Michigan Department of Education
P.O. Box 30008
Lansing, MI 48909
E-mail: pupilacctpubliccomment@michigan.gov
Fax: 517-373-7113

If special accommodations are needed to participate in the public hearings, contact Ms. Sandra Morford at 517-373-3350 or e-mail at morfords@michigan.gov by March 20, 2008.

**CORRECTION OF OBVIOUS
ERRORS IN PUBLICATION**

MCL 24.256(1) states in part:

“Sec. 56. (1) The State Office of Administrative Hearings and Rules shall perform the editorial work for the Michigan register and the Michigan Administrative Code and its annual supplement. The classification, arrangement, numbering, and indexing of rules shall be under the ownership and control of the State Office of Administrative Hearings and Rules, shall be uniform, and shall conform as nearly as practicable to the classification, arrangement, numbering, and indexing of the compiled laws. The State Office of Administrative Hearings and Rules may correct in the publications obvious errors in rules when requested by the promulgating agency to do so...”

**CORRECTION OF OBVIOUS
ERRORS IN PUBLICATION**

**Agency's Memo
February 29, 2008**

Ms. Norene Lind, Administrative Rules Manager
State Office of Administrative Hearings and Rules
2nd Floor; Ottawa Building
Lansing, MI 48909

Dear Ms. Lind:

We currently have a Rule Set (2006-078 AC) that was filed with the Office of the Great Seal on February 21, 2008; however, we need to make a correction to an obvious error under MCL 24.256(1), thereby obviating the need for formal and costly rulemaking.

Rule Set (SOAHR #2006-078 AC)

Regulation 637, Rule 11(2) establishes the requirement for commercial pesticide applicators to post a lawn marker when making a broadcast, foliar, or space application of pesticides to an ornamental or turf site, other than a golf course or farm production operation.

Rule 11(2)(b) currently states: Immediately following the application, a commercial applicator shall place a lawn marker sign at the primary point or points of entry. Lawn markers specified in subrule (1) of this rule shall only be used when making pesticide applications and shall be in compliance with all of the following specifications: (remainder correct)

Unfortunately MDA did not recognize that when the rule was amended the addition of subrule (1) to Rule 11 should have resulted in an edit to rule 11(2)(b) changing the reference from "...subrule (1) ..." to "...subrule (2)..." accurately referencing the requirement for lawn posting markers. If a reader follows the current citation, the reader will be confused because Rule 11(1) does not have any language on lawn markers.

Rule 11(2)(b) should be amended to correct the obvious error to read: Immediately following the application, a commercial applicator shall place a lawn marker sign at the primary point or points of entry. Lawn markers specified in subrule (2) of this rule shall only be used when making pesticide applications and shall be in compliance with all of the following specifications: (remainder correct) We would ask that you make this correction under MCL 24.256 and publish it in the Michigan Register and the Michigan Administrative Code.

If you have any questions about this transmittal, please contact me at 241-4085.

Sincerely,
Bradley Deacon
Regulatory Affairs Officer

cc: B. Rowe, Pesticide Section Manager, MDA

SOARH Memo
March 10, 2008

Mr. Bradley Deacon
Michigan Department of Agriculture
6th Floor North – Constitution Hall
Lansing, MI 48909

RE: Request for correction under MCL 24.256(1)

Dear Mr. Deacon:

The State Office of Administrative Hearings and Rules hereby approves your request of February 29, 2008 to amend R 286.637.11 of the Michigan Administrative Code under MCL 24.256(1) of the Administrative Procedures Act.

R 285.637.11 (2)(b) shall be amended as follows:

(b) Immediately following the application, a commercial applicator shall place a lawn marker sign at the primary point or points of entry. Lawn markers specified in subrule (2) of this rule shall only be used when making pesticide applications and shall be in compliance with all of the following specifications:

If you have any questions, please do not hesitate to contact our office.

Sincerely,

Norene K. Lind
Administrative Rules Manager

file: 2006-078 AC

**ENROLLED SENATE AND HOUSE BILLS
SIGNED INTO LAW OR VETOED
(2008 SESSION)**

Mich. Const. Art. IV, §33 provides: “Every bill passed by the legislature shall be presented to the governor before it becomes law, and the governor shall have 14 days measured in hours and minutes from the time of presentation in which to consider it. If he approves, he shall within that time sign and file it with the secretary of state and it shall become law . . . If he does not approve, and the legislature has within that time finally adjourned the session at which the bill was passed, it shall not become law. If he disapproves . . . he shall return it within such 14-day period with his objections, to the house in which it originated.”

Mich. Const. Art. IV, §27, further provides: “No act shall take effect until the expiration of 90 days from the end of the session at which it was passed, but the legislature may give immediate effect to acts by a two-thirds vote of the members elected to and serving in each house.”

MCL 24.208 states in part:

“Sec. 8. (1) The State Office of Administrative Hearings and Rules shall publish the Michigan register at least once each month. The Michigan register shall contain all of the following:

* * *

(b) On a cumulative basis, the numbers and subject matter of the enrolled senate and house bills signed into law by the governor during the calendar year and the corresponding public act numbers.

(c) On a cumulative basis, the numbers and subject matter of the enrolled senate and house bills vetoed by the governor during the calendar year.”

**ENROLLED SENATE AND HOUSE BILLS
SIGNED INTO LAW OR VETOED
(2008 SESSION)**

Public Act No.	Enrolled House Bill	Enrolled Senate Bill	I.E.* Yes / No	Governor Approved Date	Filed Date	Effective Date	Subject
1		730	Yes	1/11	1/11	1/11/08	Education; other; references to "handicapped person" in school code; revise to "student with a disability", allow for transfer of public school academy assets and pupils to another public school, and revise effective date for school district consolidations. (Sen. J. Gleason)
2		545	Yes	1/16	1/16	1/16/08	Environmental protection; water pollution; storm water permits; provide waiver of fees for certain municipalities. (Sen. M. Jansen)
3	5123		Yes	2/7	2/7	2/7/08	Economic development; commercial redevelopment; obsolete requirement; modify. (Rep. S. Bieda)
4	5101		Yes	2/7	2/7	2/7/08	Economic development; neighborhood enterprise zones; eligibility; expand to include new facilities. (Rep. B. Farrah)
5		111	Yes	2/7	2/7	2/7/08	Mobile homes; other; penalties for park owners who fail to remit assessment tax; provide for. (Sen. R. Jelinek)

* - I.E. means Legislature voted to give the Act immediate effect.

** - Act takes effect on the 91st day after *sine die* adjournment of the Legislature.

*** - See Act for applicable effective date.

+ - Line item veto

- Tie bar

Public Act No.	Enrolled House Bill	Enrolled Senate Bill	I.E.* Yes / No	Governor Approved Date	Filed Date	Effective Date	Subject
6		577	Yes	2/12	2/12	8/10/08	Construction; housing; certain requirements for residential owner-builders to comply with prior to sale of structure; clarify. (Sen. J. Gilbert)
7	4505		Yes	2/15	2/15	2/15/08	Traffic control; driver license; issuance of driver license to individual not lawfully in the United States; prohibit, and revise procedures for issuance of license. (Rep. C. Ward)
8		092	Yes	2/20	2/20	2/20/08	Environmental protection; permits; liquid industrial waste; exempt fats used to produce fuels, and make technical revisions. (Sen. R. Basham)
9		123	Yes	2/29	2/29	2/29/08	Businesses; nonprofit corporations; use of electronic communications; allow for nonprofit corporations. (Sen. A. Sanborn)
10		565	Yes	2/29	2/29	6/1/08	Crimes; larceny; shipping containers; include in crime of breaking and entering. (Sen. J. Gilbert)
11	4684		Yes	2/29	2/29	2/29/08	Liquor; other; serving alcohol to an individual who is intoxicated; clarify. (Rep. F. Accavitti)
12	5032		Yes	2/29	2/29	2/29/08	Land use; zoning and growth management; zoning enabling act; make corrective and technical revisions. (Rep. B. Byrum)

* - I.E. means Legislature voted to give the Act immediate effect.

** - Act takes effect on the 91st day after *sine die* adjournment of the Legislature.

*** - See Act for applicable effective date.

+ - Line item veto

- Tie bar

Public Act No.	Enrolled House Bill	Enrolled Senate Bill	I.E.* Yes / No	Governor Approved Date	Filed Date	Effective Date	Subject
13	5034		Yes	2/29	2/29	2/29/08 #	Agriculture; fertilizer; "agricultural use"; define. (Rep. J. Sheltroun)
14	5035		Yes	2/29	2/29	2/29/08	Agriculture; fertilizer; approval for ordinance regarding use of agricultural fertilizer; require by Michigan commission of agriculture. (Rep. J. Mayes)
15		097	Yes	2/29	2/29	6/1/08	Children; child care; requirement for licensees and registrants to notify parents of complaints of rule violations and investigations; establish. (Sen. B. Hardiman)
16		155	Yes	2/29	2/29	6/1/08 #	Criminal procedure; sentencing guidelines; crime of false report initiating special investigation; enact. (Sen. C. Brown)
17		630	Yes	2/29	2/29	2/29/08	Highways; name; certain portion of M-62; designate as the "Veteran's Memorial Highway". (Sen. R. Jelinek)
18		682	Yes	2/29	2/29	2/29/08	Agriculture; pesticides; distributors of agricultural pesticides; require to be licensed, and require out-of-state pesticide dealers to maintain a registered office. (Sen. M. McManus)

* - I.E. means Legislature voted to give the Act immediate effect.

** - Act takes effect on the 91st day after *sine die* adjournment of the Legislature.

*** - See Act for applicable effective date.

+ - Line item veto

- Tie bar

Public Act No.	Enrolled House Bill	Enrolled Senate Bill	I.E.* Yes / No	Governor Approved Date	Filed Date	Effective Date	Subject
19	5021		Yes	3/6	3/7	3/7/08	Vehicles; equipment; certain visual displays for use in motor vehicles; revise requirements. (Rep. K. Angerer)
20	4650		Yes	3/6	3/7	3/7/08	Civil procedure; other; uniform foreign-country money judgments recognition act; create. (Rep. P. Condino)
21	5384		Yes	3/6	3/7	3/7/08	Energy; other; energy employment act; revise. (Rep. M. Nofs)
22	4220		Yes	3/12	3/12	3/12/08	Public employees and officers; ethics; school board member volunteer service in school district; allow under certain conditions. (Rep. J. Espinoza)

* - I.E. means Legislature voted to give the Act immediate effect.

** - Act takes effect on the 91st day after *sine die* adjournment of the Legislature.

*** - See Act for applicable effective date.

+ - Line item veto

- Tie bar

MICHIGAN ADMINISTRATIVE CODE TABLE
(2008 SESSION)

MCL 24.208 states in part:

“Sec. 8. (1) The State Office of Administrative Hearings and Rules shall publish the Michigan register at least once each month. The Michigan register shall contain all of the following:

* * *

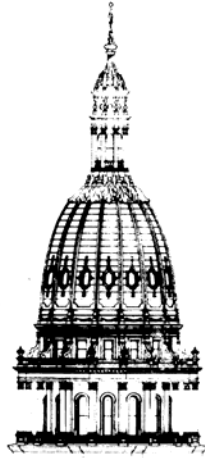
(i) Other official information considered necessary or appropriate by the State Office of Administrative Hearings and Rules.”

The following table cites administrative rules promulgated during the year 2000, and indicates the effect of these rules on the Michigan Administrative Code (1979 ed.).

**MICHIGAN ADMINISTRATIVE CODE TABLE
(2008 RULE FILINGS)**

R Number	Action	2008 MR Issue	R Number	Action	2008 MR Issue
257.1603	*	2	418.10922	*	4
285.637.1	*	4	418.10923	*	4
285.637.2	*	4	418.10923b	*	4
285.637.3	*	4	418.10925	*	4
285.637.4	*	4	418.101002a	*	4
285.637.5	*	4	418.101003	*	4
285.637.6	*	4	418.101003a	A	4
285.637.7	*	4	418.101005	*	4
285.637.8	*	4	418.101015	*	4
285.637.9	*	4	418.101023	*	4
285.637.10	*	4			
285.637.11	*	4			
285.637.12	*	4			
285.637.13	*	4			
285.637.14	*	4			
285.637.15	*	4			
285.637.17	*	4			
336.1401	*	2			
336.1401a	A	2			
336.1402	*	2			
336.1404	*	2			
336.1405	A	2			
336.1406	A	2			
336.1407	A	2			
336.1420	A	2			
339.16001	*	4			
339.16003	*	4			
339.16021	*	4			
339.16025	*	4			
339.16026	A	4			
418.10104	*	4			
418.10107	*	4			
418.10504	*	4			
418.10901	*	4			
418.10902	*	4			
418.10909	*	4			
418.10912	*	4			
418.10913	*	4			
418.10921	*	4			

(* Amendment to Rule, **A** Added Rule, **N** New Rule, **R** Rescinded Rule)



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Local Snowmobile/Off Road Vehicles Control (2008-2)